

**A Comparative Study on Formal Dispute Resolution
Procedures in Greece and UK:
Can UK procedures be adopted by the Greek
Construction Industry?**

By

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List of Abbreviations

ADR - Alternative Dispute Resolution

ANBs – Adjudication Nominating Bodies

BOT- Built- Operate- Transfer

C.Civ.P – Code of Civil Procedure

CIMAR - Construction Industry Model Arbitration Rules

C.Gov.P - Code of Governing Procedure

GDP – Gross Domestic Product

HGCRA – Housing Grants Construction and Regeneration Act

ICC – International Chamber of Commerce

ICE – Institute of Civil Engineers

JCT – Joint Contracts Tribunal

NEC - New Engineering Contracts

PD – Presidential Decree

PPP – Public Private Partnership

RIBA - Royal Institute of British Architects

SCA – Society of Construction Arbitrators

SoC – Statement of Case

TCG – Technical Chamber of Greece

List of Greek Statutes

Law **1418/1984** - “Public Works and settlement of other relative issues”

Law **1955/1991** - “Foundation of Attiko Metro and other provisions”

Law **2052/1992** - “Measures against CO₂ pollution and other urban planning regulations”

Law **2229/1994** - “Amendment and completion of the Law 1418/84”

Law **2338/1995** - “Sanction of the Contract for the International Airport in Spata....and other provisions”

Law **2395/1996** - “Concession agreement for the construction of the Rio-Antirio Bridge”

Law **2690/1999**- Code of Administrative Procedures and other provisions”

Law **2717/1999** - “Regulation for the penalties, the speedup and updates of the jurisdiction procedures”

Law **2940/2001**- Developmental, Taxable and Institutional motivations for the Construction field and other provisions

Law **3212/2003** - “Building and town-planning provisions”

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Abstract

This dissertation is about evaluating the alternative dispute resolution methods used in the Greek and UK construction industry. The main purpose is to examine whether the dispute resolution procedures as used in the construction industry can be applied effectively in the Greek construction industry.

The theoretical frameworks of the resolution procedures the Greek and UK construction industry use to settle their disputes are presented and analysed. Consequently, the main issues extracted from the critical literature review were assessed by Greek practitioners of law with the use of semi-structures interviews.

The case studies indicated that dispute resolutions like arbitration are disappointingly uncommon and not preferable from the construction industry in Greece. It is deemed that the practical and effective procedures provided by the UK dispute resolution framework can be an ideal guideline for the Greek dispute resolution system.

Keywords: alternative dispute resolution procedures, arbitration, adjudication, Greek construction industry, UK construction industry

To my parents and my brother,

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1 Introduction

1.1 *Working Title*

A comparative study on Formal Dispute Resolution in Greece and UK: Can UK procedures be adopted by the Greek Construction Industry?

1.2 *Rationale*

The Construction industry is the greatest industry in the European Union and it accounts for about 10% of the gross domestic product (GDP) and this ratio is a representation figure of the high level of construction activity both in UK and Greece¹. Indeed, in Greece, the construction industry is one of the most rapidly developing fields of the Greek economy despite its constant structural problems. In fact, since 2004 and due to the construction works for the Olympic Games in Athens, the construction industry accounted almost for 10% of the GDP compared to 6.4% in 1997². In Public-Private-Partnership (PPP) particularly, projects of billions of Euros are invested every year,³ an amount which however does not make private projects of less importance or interest.

However, the construction industry is inherently unique. Dynamic and complex projects especially where a considerable number of clients, contractors and engineers are involved within a complicated lawful relationship, sometimes might lead to a numerous situations of conflict and thus claims between the parties involved⁴. Over the past years, the number of disputes in the construction industry increased gradually and is considered to be an endemic

¹ Gaitskel, R., *Trends in Construction Dispute Resolution*, 12/08/05, website assessed on 8/05/08:

http://goliath.ecnext.com/coms2/summary_0198-250246_ITM

² Moropoulou, A., *The role of engineers towards the challenge of highly infrastructure projects for the technological growth in Greece and Europe*, Unpublished report, Retrieved on 24/06/08, available at: www.ekt.gr/news/events/ekt/infrastructures/a_moropoulou.ppt

³ Psomiadis, K., Theodorou, C., (2006), *Legislation and Dispute Resolution in Public Projects*, Dissertation report conducted in the Department of Civil Engineering, Ethnikon Metsovion Politechnion

⁴ Bradley, S. and Langford, D.A, (1987), *Contractor's claims*, Building Technology and Management, June/July, 20-23.

occurrence, while coming to an effective, economic and speedy settlement of the disagreements became an urgent need⁵.

Arbitration is the only formal dispute resolution method which is practised in the Greek construction industry and only for private and Build-Operate-Transfer (BOT) contracts. According to Verveniotis, arbitration is the simplest and fastest procedure of dispute resolution for extremely complex projects such as projects conducted within a BOT contract⁶. However, when the decision is made, the arbitration award cannot be reviewed. It may be annulled either in whole, or part, by a court judgment but only for specific procedural reasons. For technical conflicts only, the disputing parties can resort to arbitration conducted by the Technical Chamber of Greece (TCG) just as long as it is part of the contractual terms⁷. In the recent years, only three cases were resolved from a regional TCG⁸, a number which indicates the denial on behalf of the construction players to perceive arbitration as a formal dispute resolution method.

Nevertheless, in public projects where the financial risk is allocated exclusively to the public sector, then another procedure of resolution must be followed. The contractor can make an "objection" against the disputed act of the directing service by referring it to the supervisory authority of the project. The "objection" is considered to be declined after a period of 60 days even if the supervisory authority fails to give an official answer. The next stage which the contractor must follow is a "Healing Request", submitted to the Minister of Environment, Physical Planning and Public Works. In consequence to this "healing request" the Minister must make a decision concerning the "healing request" within a period of 90 days after taking consideration the views of the Technical Council (Clause 2949/84). It must be noted that most of the times the request for a remedy is ignored, and the request is considered "silently" declined⁹. If such an outcome arises, the disputing contractor is left to make an appeal in the Civil Court.

The above procedure is mandatory and is the only official alternative dispute resolution for simple PPP contracts. Unfortunately, the public authority is not committed to give an actual

⁵ Barrie, D.S. and Paulson, B.C., (1992), *Professional Construction Management: Including CM, Design-Construct and General Contracting*, McGraw-Hill Inc., New York

⁶ Verveniotis, G., (1993), *Execution of Public Works-Concession (BOT) agreements*, Sakkoula Publishing, Athens-Komotini.

⁷ Kalavros, F.,K., (1992), *Arbitration*, Sakkoula Publishing, Athens-Komotini

⁸ Appendix 11, Thanasis Gadas, Personal contact

⁹ Kotsovinos, E.,V., (2007), *Legislation by Article for Public Works*, 4th Edition, Halkida

resolution of the problem and thus the procedure is turned into a bureaucratic pre-procedure for dispute resolution ultimately leading to the Civil Court. In meantime valuable time is wasted¹⁰.

On the other hand, the situation in the UK indicates a different and more mature way of dealing with the problem. Arbitration is a widely applied procedure. However, the UK Government wishing to respond more effectively to the adversarial and litigious nature of the construction industry, commissioned Sir Michael Latham, a former Conservative MP and ex-director of the UK Housebuilders Federation to review procurement and contractual arrangements in the construction industry. The Latham Report entitled 'Constructing the Team' was published in 1994. In Chapter 9 of this report, dealing with 'Dispute Resolution' Sir Michael Latham recommends the broader utilisation of 'alternative dispute resolution methods' (ADR) and in particular he argues that adjudication should be the normal form of dispute¹¹.

Adjudication was subsequently introduced in UK when Part II of the Housing Grants, Construction and Regeneration Act 1996 came into effect in 1998¹². The new procedure has been adopted widely, because it excels in the determination of the dispute which responds in manner of time, using adjudication up to and including 2005, are estimated to be in excess of 2500¹³.

The principal theme of this research is to review formal dispute resolution procedures in Greece and UK and identify the differences within the two countries. A critical aspect of this study will be to highlight and discuss the problems and difficulties that arise for the disputing parties when they follow the existing dispute resolution methods and procedures in the Greek construction industry. An attempt will be made to determine whether any UK formal dispute resolution procedures, and especially adjudication and arbitration, can be transferred to the Greek Construction Industry.

1.3 Aim

To examine whether the dispute resolution procedures as followed in the UK construction industry can be applied effectively in the Greek Construction industry.

¹⁰ Appendix 11, Konstantinos Theodorou, personal contact

¹¹ Knowles, J.R., *How to prepare a case for adjudication*, ASI Journal, 08/00, p.37

¹² *Where should I go: Litigation, Arbitration, Mediation or Adjudication?* in The Chartered Institute of Building members' newsletter, Mar-Apr/03, Issue 39, p.9

1.4 Objective

1. To provide a critical overview on the formal dispute resolution procedures in Greece.
2. To provide a critical overview on the formal dispute resolution procedures in UK.
3. To compare the procedures and their application in the two countries.
4. To undertake a comparison study to determine whether any of the UK construction industry's formal resolution procedures can be transferred to Greece.
5. To draw conclusions and make recommendations against the given aim and in testing the hypothesis.

1.5 Hypothesis

Due to inefficiency of the current dispute resolution procedures in Greece, the Greek construction industry should adopt more effective processes to deal with the conflicts, differences and disputes arising in the industry.

1.6 Methodology

Stage 1-Literature research

A comprehensive literature review relevant to the main subject will be undertaken to provide an understanding of how adjudication and arbitration as means of resolving disputes works in both countries. Particularly, the study will focus on the process of preparing a case for adjudication and arbitration, as well as looking at the benefits and drawbacks of the procedures. Several sources including textbooks, academic/trade journals, professional magazines and internet, will be the underpinning of the research.

Stage 2-Evaluation of the literature review

Critically, the author will try to compare the dispute resolution methods discussed between the two countries.

Stage 3- Comparison-main study

The information collected at the previous stage will be examined and comparisons identified of the dispute resolution procedures in UK and Greece will be made.

Stage 4-Fieldwork investigation-main study

The fieldwork investigation will attempt to examine the views of the Greek construction industry for both public and private projects, or the efficiency of the current dispute resolution system. The investigation will seek the view of the construction practitioners and their perception for transferring the UK procedures in Greece.

Stage 4-Analysis of Results and Conclusion

The data gained from the fieldwork study will be presented and discussed and then discussed in relation to the literature review findings.

1.7 *Dissertation Structure*

The general structure of the dissertation is:

Chapter1: Introduction

Chapter 2: Formal Dispute Resolution in the Greek construction industry and the problems difficulties that arise from the disputing parties in following these disputes resolution methods.

Chapter 3: Formal Dispute Resolution in UK construction industry.

Chapter 4: Comparison of Dispute Resolution Procedures in Greece and UK including the identification of any transferable procedures from the UK to the Greek construction industry.

Chapter 5: Research Methodology

Chapter 6: Research Findings and Discussion

Chapter 7: Conclusion and Recommendations

Chapter 8: List of References and Bibliography

Chapter 9: Appendices

2 Formal Dispute Resolution in the Greek Construction Industry

2.1 *Scope of the Chapter*

This chapter will review the literature regarding the formal Dispute Resolution methods in the Greek Construction Industry. The chapter will take an insight into the exceptional characteristics of the Greek Legislation for Public Works, where projects undertaken under Traditional Contracts and projects undertaken under the concession method (Build-Transfer-Operate) use different dispute resolution methods but they are mainly regulated by the two Laws: 1418/84 (“Public Works and settlement of other relative issues”) and 2052/92 (“Measures against CO₂ pollution and other urban planning regulations”). Moreover, the chapter will look at the Rules of Code of Civil Procedure (C.Civ.P) and the Rules of the Technical Chamber of Greece (TCG), which are followed for the settlement of the disputes in Public Projects and for the technical disputes respectively.

2.2 *Traditional Contracts in Public Sector*

The first section of the chapter will look at the Administrative Dispute Settlement for projects undertaken under Traditional contracts, a method, which uses the legal-like procedures “objection” and “healing therapy”. The semantic difference of the Traditional Contracts from the BOT contracts is the fact that the contractor bears only the risk of the appropriate execution of the construction works. Furthermore, the projects executed under Traditional Contract are usually small regional projects and therefore less complex compared to BOT projects.

The main parties involved in the construction of Public Works undertaken under Traditional contracts, are the contractor, and from the Greek State’s side, the Directing Service and the Supervising Authority. The Directing Service is responsible for tasks such as the terms of the contract, payments and the supervision of the construction and the contractor, while the Supervising Authority is responsible for more important tasks and decisions, including any dispute settlement¹.

¹ Appendix 11, Stefanos Gerasimou, Phone contacts

Articles 12 and 13 of the Law 1418/84 regulate the dispute resolution methods for Public projects and which are mainly followed for the Traditional contracts. Particularly, Article 12 outlines Administrative Dispute Resolution, which is the subject of the examination in this section, while Article 13 regulates the Juridical Dispute Resolution.

The use of legal-like procedures of “objection” and “healing request” is essential when a dispute arises concerning the offence of the contractors’ interest due to the executable acts and/or the neglected actions of the Directing Service. The use of “Objection” and “Healing Request” is a mandatory administrative pre-procedure the contractor must follow if he wants to retain his right to proceed to a further juridical settlement of the dispute, either through the Administrative Court, or through the Civil Court.

The dissertation review will start with the Objection, which is the first stage of the mandatory pre-procedure and will continue with an insight into the theory and procedure of the Healing request.

2.2.1 The Concept of Objection

The “Objection” is a legal-like appeal, which according to the Articles 12 and 13 of the Law 1418/84, is a typical requirement of the acceptance of the legal aids (e.g. Healing Request, Appeal to litigation) that are likely to be used before any dispute can be referred to the Administrative, or Civil Court and must be performed within a time limit which is orientated from the provisions of the said Law. The significance of the objection as a legal-like appeal is that gives the opportunity to the Regional Administration, apart from the legality check of the disputed act, to re-examine the case more substantially and to come up with a new judgment, after the examination and evaluation of the real facts from the beginning².

As mentioned above, the acceptable act of “objection” appears to be the necessary means of the acceptance concerning referral to the “healing request” and moreover, a requirement prior to an appeal to the court. As a result, keeping up with the time limits and the typical requirements which regulate the objection’s procedure, is very important for the contractor. A possibility of the non acceptance of the above affects all the subsequent stages of the dispute resolution; all

² Stamopoulos, S., (2000), *Law of Public Works- Theory and Legislation*, Legal Library Publishing, Athens

the legal-like and legal aids³ (for instance, the action of “healing request” or the appeal to the court).

The Law 1418/84, states that the objection” is viable for the “damaging acts” of the Directing Service, without indicating anything about the Directing Service’s omissions. Therefore, the Council of State interpreted the relative provision and had come to the conclusion that for any omissions of the Directing Services the contractor cannot use the act of “objection” against these omissions⁴.

As a result, in case of the Directing Service not being able to proceed to the adequate and expected actions after the relative request from the contractors’ side (deemed as an omission from the Directing Service’s side), the contractor could proceed directly to an appeal before the appropriate court, in order to present straight forward this omission, while he was not allowed to follow the expected legal pre-procedure by raising an objection and continuing with a healing request⁴.

On the contrary to the Court of State, the administrating courts were supporting the opinion that the omissions are equal to “damaging acts” against contractor’s benefits and as a result they are a subject to equal legal treatment, even when there was not a specific requirement at the provisions of the law (1418/84). Until putting into action the relevant provision of the Law 2690/99 of the Code of Governing Procedure (C.Gov.P), this belief consisted of important elements of pertinence and for that reason, it was reckoned safer for the contractor to follow both legal procedures in parallel; the objection and the direct appeal to the court against the Service’s omission³.

The above theoretical problem along with its substantial practical issues, found an important resolution through C.Gov.P, (Law 2690/99). In the Introductory Presentation of the Code referring to article 24, the opinion is stated is that there is no place for an objection against omission. Therefore, after the actualisation of the Code of Governing Procedure, it was assumed that the more correct decision for the contractor against the omissions of the Directing Services, is to appeal directly to the court and in this case not to follow the legal-like pre-procedure which is promoted by the special legislation for public projects (see Law 1418/84)³.

³ Kotsovinos, V., (2003), *Legislation by Article for public Works*, 2nd Edition, Kotsovinos Vasilis Publishing, Halkida

⁴ Soldatos, D., (2002), *Public Projects*, Dimopoulou Publishing, Athens

However, the first paragraph of the Law 1418/84 was modified by the law 2940/2001 (Paragraph 1 of Article 3/Developmental, Taxable and Institutional motivations for the Construction field and other provisions) and later by the Law 3212/2003 (Paragraph 3/Article 15) and both clearly demonstrate the contractor's right to follow the administrative pre-procedure (objection and healing request) against Directing Service's "damaging acts" as well as its omissions⁵.

2.2.2 The Procedure of Objection

The objection is referred to the Supervising Authority and is performed after its statement to the Directing Service within a deadline of 15 days from the publication of the disputed act against the contractor, except from exceptional cases, where a special provision indicates different deadlines, or authorities to which the parties have to refer to. The term "statement" consists of the forwarding of the objection via post, only if in this last situation the objection has been registered to the protocol of the appropriate service and it has been given a date of registration which will be set within the deadline¹.

The non precise inscription in the text of the objection to the Supervising Authority, or the omission of addressing the reference to it does not make it unacceptable for two reasons; firstly because this type of consequence is not predicted by the Law 1418/84, and secondly, because it could be communicated from the Directing Service to the Supervising Authority in order for the Authority to be aware of its context. However its content must set clear that it refers to an objection against the Directing Service. Nevertheless, it must be stressed, that the acceptance of the objection has nothing to do with the existence of a possible obligation of the Directing Service to communicate the objection to the Supervising Authority. This fact by itself, cannot influence the judgement of the acceptance or not of the objection⁶.

The objection is used in order to dispute against administrative acts of the Directing Service, which appear to be harmful to the best interest of the contractor. By the term harmful, is meant all those acts that offend the legal interest of the contractor for the first time, stating the exact moment that the dispute commenced. In case other repeated acts are raised for the same subject, they are regarded as repetitive, and they are not executable. As a result, only the initial harmful act can be settled by the use of objection and if the two month deadline has lapsed for

⁵ Markopoulos, N., (2004), *Law of Public Agreements*, Sakkoulas Publishing, Athens-Komotini

⁶ Stigas, T., (2002), *Legislation for Public Works and Supplies*, Legal Library Publishing, Athens

the raising of an objection, the right of the contractor to proceed to “objection”, against the Directing Service is completely erased, even if in the future there is a harmful act from the side of the directing service, which insults the same right of the contractor as the initial act, or confirms the initial harmful act. There is an exception for the newer acts which were confirmed after the conduct of a new examination and which can be settled through an “objection”⁷.

Nevertheless, if the “objection” against the act which confirms the initial harmful one is raised within the deadline of raising an “objection” against the initial harmful interpretation of the administrative act, this very last act is also considered acceptably insulting even if the “objection” is not referred directly to it⁸.

Moreover, in the event the Directing Service commits a new harmful act in the same content as the one against which the objection was raised and there is a pending legal-like procedure of its examination, the Regional Administration is perceived to breaking the rules of the contractor’s right to the smooth execution of the project. For that reason, it is likely for the Administration to be obliged to prevent the commencement of a new act with similar content to the subject of the pending dispute. Contrary to the above, if the later act is confirmation of the content of the initial harmful one, but results to a new dispute, then another self contained objection is possible⁹.

The contractor has the right to raise only one objection against the same harmful act commenced from the Directing Service’s side. As a result, it is not acceptable to have a second objection against the same harmful act, or the same omission, even if there is time within the deadline for its realization. The same situation exists for the healing request. It should also be mentioned, that according to the Rules of the C.Gov.P (Law 2717/99), any “objection” and/or “healing request” from which the referral party has resigned, is considered not done¹⁰.

If the “objection” (or “healing request”) is overruled as not being acceptable, for typical reasons like the qualified administrating body not completing an examination of this case, then the court, if it considers that there is no legal reason to overrule the “objection”, is not allowed to

⁷ Soldatos, D., (2002), *Public Projects*, Dimopoulou Publishing, Athens

⁸ Markopoulos, N., (2004), *Law of Public Agreements*, Sakkoulas Publishing, Athens-Komotini

⁹ Stigas, T., (2002), *Legislation for Public Works and Supplies*, Legal Library Publishing, Athens

¹⁰ Kotsovinos, V., (2003), *Legislation by Article for public Works*, 2nd Edition, Kotsovinos Vasilis Publishing, Halkida

proceed to the examination of the situation, but it holds the obligation to resend the case to the qualified administrating body, in order that it makes its judgment properly¹¹.

The authority in charge (a Department of the Regional Administration), is obliged to announce the decision within two months from the statement of the objection. The decision of the Supervising Authority concerning the objection is communicated to the contractor and this indicates the beginning of the time limit for the act of the healing request. It should also be stated that the possibility of suspending the construction works comes only in the situations of inappropriate material and/or constructional faults¹².

2.2.3 The concept of the Healing Request

The “healing request”, similar to the “objection”, appears to be a legal-like procedure according to Paragraph 3/Article 19 of the Presidential Decree 341/7817, which refers to the Minister of Environment, Urban Planning and Public Works and is examined after the communication of the “healing request” to the Superior Minister by bailiff. The healing request which is communicated to the Minister, must be accompanied with copies of the act due to which the dispute arose and the “objection” which was raised against this act, or copies of the decision to which the healing therapy referrers to¹¹.

Exceptionally, the healing request for projects done in the Local Government is examined by the District Governor. It is not obligatory to compile the healing request in a certain way. Nevertheless, it has to include the omission, or a memo of the act, a short history of the contract and the disagreement, the reasons (legal, actual, technical) on which the petitioner based his argument and finally a more precise overview of the requested issues. The absence of precise and lucid reasons and requests nullifies the healing request and concludes to its rejection as characterizing it as unacceptable¹³.

The healing request can be conducted in the following circumstances¹²:

- (a) From the contractor against the Supervising Authority, that rejects the whole, or part of the “objection” which was raised previously against the Directing Service.

¹¹ Stamopoulos, S., (2000), *Law of Public Works- Theory and Legislation*, Legal Library Publishing, Athens

¹² Kotsovinos, V., (2007), *Legislation by Article for public Works*, 4th Edition, Kotsovinos Vasilis Publishing, Halkida

¹³ Stigas, T., (2002), *Legislation for Public Works and Supplies*, Legal Library Publishing, Athens

(b) From the contractor, against the omission of the Supervising Authority to announce the decision, within a two month time limit, concerning the objection that the contractor raised.

(c) From the contractor, against decisions and actions of the Supervising Authority or the Director of the Project, if there is a disagreement on those actions for the first time.

(d) From the Director of the Project, only if it is not State initiated, against the decisions and actions of the Supervising Authority that were not in his best interest, as for instance, a decision of the Supervising Authority through which the objection of the contractor is partially, or totally rejected.

The deadline for the action of the "healing request" is three months. The beginning of this deadline is either the announcement of the decision of the Supervising Authority to the contractor concerning his "objection", either the non- acting lapse of the two month deadline, within which the Supervising Authority should have replied to the contractors' objection, or the announcement of the decision of the Supervising Authority to the contractor¹⁴.

Often, there are cases, where the Supervising Authority announces its decision about the contractor's objection after the two month deadline¹⁵. This is a matter that concerned the Greek Legislation in the past; what should be considered as the beginning of the three month deadline for the healing request?

a) The expiration of the two month deadline without an answer from the side of the Supervising Authority, where in this case, the contractor acts through a healing request, against the omission of the Supervising Authority to announce a decision within the legal time limits, by considering this non response as a negative reaction, or b) the delivery of the Supervising Authority's decision to the contractor, therefore through the submission of healing request, the contractor acts against the out of time limit decision¹⁶. The question that arises is: Has the contractor the right to act against the out of time limit decision concerning the objection, through the submission of a healing request?

The subject was adjusted legally by the Law 2229/94¹⁹. The article 3 of paragraph 2 of the Law 2229/94 was added to the article 12 of paragraph 3 of the Law 1418/84 and states the

¹⁴ Kotsovinos, V., (2003), *Legislation by Article for public Works*, 2nd Edition, Kotsovinos Vasilis Publishing, Halkida

¹⁵ Markopoulos, N., (2004), *Law of Public Agreements*, Sakkoulas Publishing, Athens-Komotini

¹⁶ Stamopoulos, S., (2000), *Law of Public Works- Theory and Legislation*, Legal Library Publishing, Athens

following: “the publication of the decision concerning the objection, after the lapse of the two month time limit, does not transfer the initiation of the above deadline for the act of a healing request”. (The above amendment was valid for public projects undertaken after the 31.10.94)

In the event the Greek State is not the direct Client of the project, the contracting party can publish any possible arguments against the contractor’s Healing Request to the Minister within one month. The omission to present these arguments is not perceived as an acceptance from the side of contracting party of the details presented in the Healing Request. Moreover, the contracting party has always the right to present its objections for the first time in the Court¹⁷.

2.2.4 The procedure of the Healing Request

In terms of the healing request the Minister is the one to make a decision, after taking into consideration the opinion of a Technical Panel, within a three month time period from the submission of the Healing Request¹⁸.

In order for the Technical Panel to discuss the Healing Request, the Technical Panel invites the parties involved in the dispute to be present on a certain day and time, not earlier than 10 days from the date of the invitation. The parties may appear in person, or be represented by a legally licensed person, in order to present their opinions and give any additional information or explanation that will be requested from the members of the Panel. In case any of the parties does not appear personally, or is not legally represented, this is noted in the minutes of the Panel and the Panel proceeds to the examination of the case without this presence¹⁹.

The examination of the “healing request” is initiated with the examination of the deadlines of the request, the severity of the situation, the announcement of the request’s submission to the contracting party (in cases where the State is not the direct Client), along with the objection of the contracting party, if there are any. Lastly, the Technical Panel examines the subject of the Healing Request along with the contractor’s claims and requests¹⁹.

If the “healing request” presents a financial issue, the Panel proceeds to an evaluation of this issue. Consequently, the Panel calls to a hearing the party who submitted the “healing request”

¹⁷ Stigas, T., (2002), *Legislation for Public Works and Supplies*, Legal Library Publishing, Athens

¹⁸ Kotsovinos, V., (2003), *Legislation by Article for public Works*, 2nd Edition, Kotsovinos Vasilis Publishing, Halkida

¹⁹ Soldatos, D., (2002), *Public Projects*, Dimopoulou Publishing, Athens

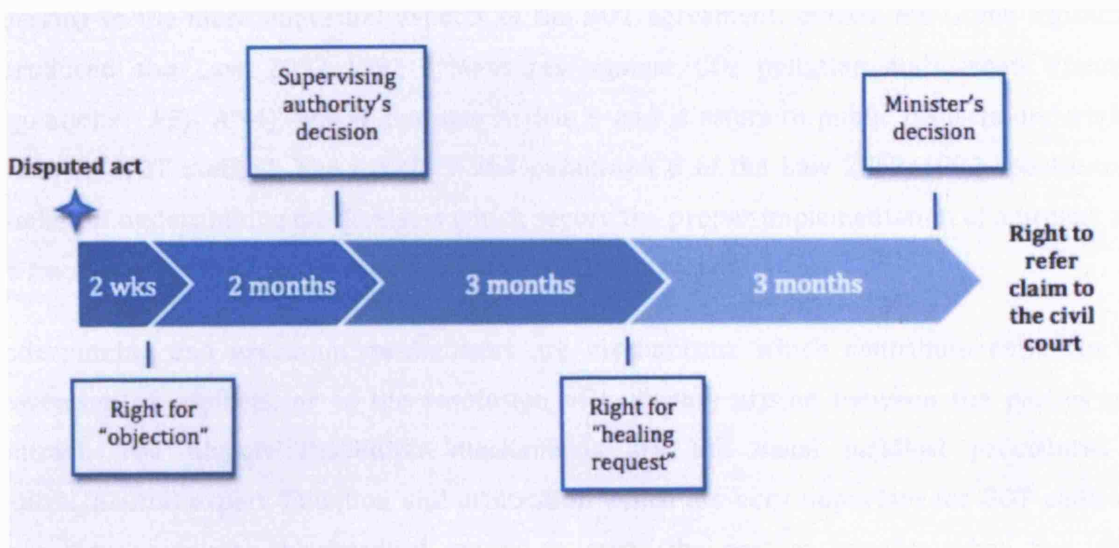
and the party who has set any objections against it. The Chairman of the Panel sets the order for the hearing, while a joint-hearing with both parties is also possible. After the completion of the hearing the members of the Panel continue their discussion and come to a justified conclusion about the case²⁰.

In case the members of the Technical Panel do not present their conclusion until the second third of the third month to the Minister, there are certain penalties which are presented in article 6 of paragraph 8 of the law 1418/84. More precisely: a) penalty of 6 month income and b) unfavourable transfer or permanent dismissal²⁰.

Finally, the Minister is obliged to publish his decision concerning the Healing Request within a 3 month time period from its submission. If the healing request is rejected, or the Minister does not publish the decision within a three month time limits, the interested party has the right to appeal to the Court²¹.

²⁰ Stamopoulos, S., (2000), *Law of Public Works- Theory and Legislation*, Legal Library Publishing, Athens

²¹ Kotsovinos, V., (2003), *Legislation by Article for public Works*, 2nd Edition, Kotsovinos Vasilis Publishing, Halkida



Source: produced by the author

Figure 1 - The process of the Administrative Dispute Settlement of disputes arising under Traditional public projects

2.3 Concession Agreements-BOT contracts in Public Sector

Projects undertaken under traditional contracts are more common in the Greek Construction Industry for public projects when it comes to small and regional construction works. However there are a considerable number of projects built under BOT (Build-Operate-Transfer) agreements. Most of them are designed for the transportation sector and they cover projects such as highways, railways, ports and airports.²² Construction projects such as the Athens International Airport (Spata), Elefsina - Agia Parskevi Highway, Attiko Metro, Rio-Antirio Bridge, Salonica Underground and energy construction works, are a few examples of such projects that have been planned and executed under the concession method in the last few years in Greece²².

However, even if the kind of projects mentioned above are an initiative of the State, the nature of their contract which transfers the risk of financing, operating and maintenance to the contractor differs radically from traditional contracts. Moreover, BOT projects are more complex because of their size and technical challenges as well as challenges to the parties involved in undertaking the numerous tasks. Greek legislation, in order to meet the practical needs in the construction field coming from BOT contracts, has introduced a special law

²² <http://www.minenv.gr/> Accessed on 3/07/2008

referring to the more important aspects of the BOT agreement. Indeed, the Greek legislation introduced the Law 2052/1992 ("Measures against CO₂ pollution and Urban Planning regulations"- FEK A'94), which contains Article 9 and it refers to public projects undertaken under the BOT method. The Article 9 and paragraph 6 of the Law 2052/1992 constitutes a number of underpinning mechanisms which secure the proper implementation of a project and are necessary for the specific requirements of BOT contracts²³.

Underpinning and execution mechanisms are mechanisms which contribute either to the prevention of conflicts, or to the resolution of a dispute arising between the parties to a contract. The dispute resolution mechanisms are the usual juridical procedures of arbitral/neutral expert valuation and arbitration which are very important for BOT contracts since they constitute the juridical means to settle the parties' benefits when the initial conditions of the agreement change. The dispute resolution methods outlined above, are regulated by the paragraph 6 in Article 9 of the law 2052/1992²⁴.

2.3.1 Arbitral Expert Valuation and Arbitration

As mentioned above, projects undertaken by the concession method, (BOT) are extremely complex. Therefore, it is a common outcome due to that complexity, to be normally impossible for the parties to determine the exact terms of the contract and as a result they agree to the alteration of the terms according to the changing conditions, as they progress through the construction works. Alternatively, it can be agreed to include "vague terms/clauses" in order to tailor the contract's context when new circumstances arise during the execution of the project.

When the parties have disagreements in determining, or certifying the specific content of the contract which must be changed, a third party must be called in to settle their difference. The third party might be either a neutral third party (according to the Article 371 of Civil Code, two parties can assign the filling of contractual gaps to a neutral third person) or, an engineer, or an arbitrator regarding the duty he/she is assigned for. The neutral party can be assigned only for

²³ Verveniotis, P.,G., (1994), The Concession Agreement (BOT) Legislation – Recent Developments, *The International Construction Law Review*, p.55

²⁴ Verveniotis, P.,G., (1993), *Execution of Public Works-Concession (BOT) agreements*, Sakkoulas Publishing, Athens-Komotini

filling contractual gaps, while the arbitrator and engineer can be assigned also to make firm a vague term of the contract, or to establish facts, such as the extent of damages incurred²⁵.

If the interested party for expert valuation decides to assign an independent engineer it can either appoint an engineer of its choice, or to select one within the catalogues of the Technical Chamber of Greece, or it can appoint him within the high court of justice, or indeed any other service which offers expert valuation by independent engineers²⁶.

Expert valuation can be conducted under the International Chamber of Commerce (ICC) rules. Either party may ask the ICC to propose, or appoint one or more experts by submitting the Request for Proposal, or the Request for Appointment correspondingly. As long as the expert is appointed he must prepare a timetable for the expert proceedings and communicate them to the parties. After hearing the parties, or receiving their written statements, the expert must make his finding known in a written expert's report²⁷. The expert valuation is temporarily binding only if conducted by an arbitrator²⁵.

After the completion of the expert valuation (with the contribution of the third party under the Article 371 of Civil Code, or by arbitral expert valuator /engineer), the parties are expected to come to an agreement and to continue their partnership. However, in case of a disagreement with the expert's valuation result, then the dispute must be resolved in the Civil or Arbitral Court. It is mandatory for the parties to resort to a more formal method of dispute resolution when the expert valuation results in an unsuccessful outcome. As it was stressed above, the clause 6 of Article 9 of law 2052/1992 gives the right to the contractor to request an adjustment of the contract as well as for compensation from the client, because the latter has not met his obligation to contribute in the initially agreed adjustment. Any appeal coming from the above disagreement, introduces a dispute relevant to follow a lawful course and its resolution is allocated to the Arbitral Court²⁸. The Arbitration is conducted according to the Rules of C.Civ.P for Arbitration, unless it is regulated differently in the provisions of the contract, as it can be seen in the section 2.4.

²⁵ Verveniotis, P.,G., (1993), *Execution of Public Works-Concession (BOT) agreements*, Sakkoulas Publishing, Athens-Komotini

²⁶ Giannelos, D., *The profession of the Engineer*, Unpublished report conducted for the 7th Technical Educational Institute of Patra, Retrieved on 3/07/2008. Available at: <http://www.cais.upatras.gr>

²⁷ International Chamber of Commerce, (2002), *Rules for Expertise*, [online publication:2005], retrieved on 01/08/2008. Available at: <http://www.iccwbo.org/court/expertise/id4424/index.html>

²⁸ Verveniotis, P.,G., (1981), *Valuation*, Sakkoulas Publishing, Athens-Komotini

The practical differentiation between the arbitral/neutral expert valuation and the arbitration itself is that the arbitration award is not subject to any means of appeal. Nevertheless, the arbitration award may be annulled in whole, or in part by a court judgment, and only for a limited number of reasons regarding the arbitration's procedure. The reasons which can lead to the award's annulment are detailed in the Article 897 of CCiv.P and they are²⁹:

- 1) If the arbitration agreement was invalid.
- 2) If the award was issued after the arbitration agreement had expired.
- 3) If the arbitrators who issued the arbitration award were appointed in violation of the terms of the arbitration agreement, or of the provisions of law, or if the parties had withdrawn them, or if they ruled inspite of the acceptance of an application for their exclusion.
- 4) If the arbitrators who issued the arbitration award overstepped the authority given to them either by the arbitration agreement, or by the law.
- 5) If the provisions of Article 886 of CCiv.P (discontinuance of the agreement), or if the Articles 891 and 892 of CCiv.P (content of the arbitration award) were violated.
- 6) If the arbitration award is contrary to public order provisions, or to moral conventions.
- 7) If the arbitration award contains contradictory provisions.
- 8) If there is a reason for a review under Article 544 of the CCiv.P.

On the contrary, the ascertainment, or recommendation coming from the arbitral expert valuation (meaning conducted by an arbitrator), are unconditionally open to review and is only binding on the two parties until the Arbitral or Civil Court's judgment³⁰.

However, standard contract forms for the execution of public works are not currently applied in Greece. The contracts are usually formulated according to the tender documents and to the tender conditions. Ordinarily, construction contracts which include special conditions concerning complex long-term contracts are presented to Parliament and ratified by a special law. Thereby, each BOT contract in Greece is regulated by the law which is ratified specifically for that project. However, the mutual rights and obligation from the sides of client-public sector and contractor are not altered by the ratification of the contract by a special law. Actually, the

²⁹ Karatza, L., (2005), *4 Codes*, Legal Library Publications, Athens

³⁰ Behs, E.,K., Civil Procedure-Arbitration, Article retrieved on 3/07/2008. Available at:

<http://www.kostasbeys.gr/articles.php?s=3&mid=1096&mnu=1&id=21216>

scope of the above procedure is to protect the contractor and is recommended especially when the projects are of major importance and they have important impact on the economy and the environment of the country³¹.

2.3.2 Alternative Dispute Resolution in Three Greek Construction BOT Contracts

The present review of three major cases in the Greek Construction Industry concerning construction projects undertaken by the concession method aim to illustrate the situation of the ratification procedure as outlined in the section above and the dispute resolution mechanisms which are conducted at each case. The review will be made on the following projects: the Athens International Airport, the Rio- Antirio Bridge³² and the Athens Attiko Metro³³.

2.3.2.1 The Athens International Airport

The contract which refers to the construction conditions of the Athens International Airport is ratified by Law 2338/1995 and published in the Government Gazette (FEK A' 202/14.9.1995). Article 44 of the Agreement which was signed in Athens on the 31st of July in 1995 between the Greek State and the Consortium, particularly it refers to the "Settlement of Disputes". The Article 44 above, is divided into three paragraphs which describe the three different stages of the Dispute Resolution procedure in the case of a dispute arising. The three paragraphs are³²:

44.1 Resolution Board

44.2 Mediation Panel

44.3 Arbitration

The process of the procedures are attached in the Appendix A

³¹ Verveniotis, P.,G., (2000), *International Commercial Arbitration II*, Sakkoulas Publishing, Athens-Komotini

³² Verveniotis, P.,G., (1996), *Alternative Dispute Resolution in Two Major Construction BOT Contracts*, *The International Construction Law Review*, p.589

³³ Verveniotis, P.,G., (1993), *Execution of Public Works-Concession (BOT) agreements*, Sakkoulas Publishing, Athens-Komotini

2.3.2.2 *The Rio-Antirio Bridge*

The agreement for the construction of the Rio-Antirio Bridge, a major development for Greece between the Greek State and the Concessionaire Consortium ratified by the Law 2395/1996 (published in FEK A' 71/24.4.1996). Article 28 of the ratified Law (2395/1996) contains the following paragraphs which refer to Dispute Settlement in the case of dispute. The full process of the procedures are given in Appendix B :

28.1 Amicable Settlement

28.2 Technical and Financial Panel Procedure/ "Adjudication Panels"

28.3 Arbitration

2.3.2.3 *The Athens Attiko Metro*

The contract for the construction of the Athens Attiko Metro was ratified by the Law 1955/1991. The Article 7 of the Law 1955/1991 ratifies the foundation of a legal entity named "Attiko Metro S.A" and includes the regulations for the Dispute Settlement methods. According to Article 7 (Law 1955/1991), every dispute between the contractor and the client (The Greek State), which arises during the execution of the contract must be transferred for resolution to the Council of the State (Greek Administrative Supreme Court) or Juridical Court as seen in the articles 12 and 13 of the Law 1418/1984 –"Public Projects/Institutional law". However, the Administrative, or Juridical dispute resolution must be suspended if the procedure of Conciliation, or Technical Expertise is already in progress. Particularly, these procedures are regulated by the paragraphs 7.3 and 7.4 of the Article 7³⁴. The main content of the paragraphs are attached in the Appendix C and the dispute resolution procedures are:

7.3 Conciliation

7.4 Technical Expertise

2.4 *Dispute Settlement in Private Projects*

This subsection will review the main conditions which govern the mechanism of arbitration for private disputes. According to Article 867 (CCiv.P), all private law disputes arising between parties in construction agreements may be referred to arbitration. Since Greek Legislation has not set any special rules for arbitration in Construction Industry, any reference of construction

³⁴ Verveniotis, P.,G., (1996), Alternative Dispute Resolution in Two Major Construction BOT Contracts, *The International Construction Law Review*, p.589

disputes to arbitration must follow the conditions laid down by the Chapter Seven titled “Arbitration” of the C.Civ.P (Articles 867-903)³⁵.

Basically, the parties can make future disputes subject to arbitration with a written agreement where they refer their specific legal relationship from which disputes may arise. (Article 868 of C.Civ.P). An agreement to refer a dispute to arbitration may also be made before a court during the hearing of a case. (Article 870 of C.Civ.P). One, or several persons, or even an entire court, may be appointed as arbitrators. (Article 871 of C.Civ.P)³⁵

Arbitration commences when a party submits a notice for arbitration to the other party. If the arbitration agreement does not appoint the arbitrators, each party appoints the arbitrators. (Article 872 of C.Civ.P). Either party may submit a notice to the other party, requesting him to appoint an arbitrator within 8 days time. In the case of several arbitrators and the agreement does not stipulate otherwise, the arbitrators have to appoint the presiding arbitrator within 15 days from the last appointment. (Article 874 of C.Civ.P)³⁵. If the arbitration agreement stipulates that a third party appoints the arbitrators, or the presiding arbitrator, the third party must appoint them within 8 days. (Article 876 of C.Civ.P). If the arbitrators are not appointed within the time limits set at in the agreement (and the arbitration agreement does not stipulate otherwise), the “Single-Member court” must appoint them after a submission by one of the parties. (Article 878 of C.Civ.P). It should be noted that the appointment of an arbitrator by one of the parties, or the appointment of the presiding arbitrator by the other arbitrators, or the appointment of arbitrators by a third party, cannot be revoked. (Article 877 of C.Civ.P)³⁵.

If there are no time limits set by the arbitration agreement and the arbitrators delay unreasonably the conducting of the procedure, or the award’s announcement, then the parties may request from the court for a deadline determination. The court’s decision regarding the deadlines is not open to review. (Article 884)³⁵ As far as the actual procedure is concerned, the arbitrators determine the place and the time of the arbitration and the procedure to be followed as they see fit (if not determined by the agreement). (Article 886 Paragraph1) The parties have the same rights and obligations and should be treated equally. They also must present their evidence and put forward their arguments when they are summoned orally or, in writing as decided by the arbitrators. (Article 886 Paragraph2)³⁵. The parties have also the right to appear in the hearing with a lawyer, or a representative. (Article 886 Paragraph3). The arbitrator may

³⁵ Karatza, L., (2005), *4 Codes*, Legal Library Publications, Athens

question witnesses and experts, under oath if necessary and even ask for further evidence from the Small Claims Court (Irinodikion). (Article 888 Paragraphs1,3)³⁶

In the case of several arbitrators, the arbitration's award is decided by the majority, and if a majority decision is not feasible, the decision of the presiding arbitrator overrules the others. (Article 891) The arbitration award must be drawn up in writing and be signed by all the arbitrators. The required statements in the award are given in the Appendix 1. Any disagreement from the side of the arbitrators should also be mentioned in the documents. (Article 892) If any party applies, the arbitrators must make any corrections, or provide clarifications regarding the award. (Article 894) The award is not open to review, but it may be annulled for the reasons given in subsection 2.3.1. Any party interested in an award annulment must make an appeal within 3 months from the first announcement of the award. (Article 899)³⁷

The party bringing the other to arbitration, pays in advance half of the remuneration of the arbitrator (or the arbitrators), whilst the arbitration award stipulates the payment of the final expenses and remunerations of the procedure (Article 882, Paragraph 3) as well as which party is to pay the full amount of the costs. "In each case, the arbitration award may determine that one party is obligated to pay the remunerations and the costs as a whole" (Article 882 Paragraph5)³⁷. The remunerations of the arbitrators according to the claim size are listed in the Table 1 cited on the next page. The fees payable are converted to pounds according to the current exchange rate (0.811). Each party has the right to appeal against the determination of the costs within 3 months of the award's announcement. (Article 882 Paragraph6)³⁷

In conclusion, the general rules of arbitration for private law disputes that may apply for disputes arise under private construction agreements. However, private construction disputes may also be referred for resolution to Technical Chamber of Greece, which according to Article 902 (C.CivP) can establish a standing arbitration. The said chamber has established its own rules which comply with the rules of C.Civ outlined above and which apply to technical differences only. The rules of (TCG) for arbitration are reviewed in the following subsection.³⁶

³⁶ Kalavros, F.,K., (1992), *Arbitration*, Sakkoulas Publishing, Athens-Komotini

Claim size in Euros (€)	Claim size in Pounds (£)	Arbitrators' fees (in percentage of the claim size)
< 1,500	£1,215.60	6%
1,500.01 - 5,900	1,216.5 - 4,784.9	5%
5,900.01 - 15,000	4,785 - 12,165	4%
15,000.01 - 29,000	12,165 - 23,519	3%
29,000.01 - 150,000	23,519 - 121,650	2%
>150,000	>121,650	1%

(Source: Article 882, Paragraph 2 of C.Civ.P, last update 2005)

Table 1 - Claim size/ Arbitrators' fees

2.5 Settlement of Technical Disputes

For only technical disputes, the Technical Chamber of Greece (TCG) is authorized by the Presidential Decree (PD) 723 as published in the Government Gazette (FEK A' 217 5/17.9.1979) and according to Article 902 ("Each Chamber may conduct standing arbitration") of the PD 503/1985 (C.Civ.P) about Arbitration, to resolve disputes through the procedure of standing arbitration. The disputes which can be resolved by the TCG are regarded to be any technical differences that might arise through contracts of planning, execution, installation, maintenance, operation, or any kind of work applied to technical construction projects and in general has to come to within a relevant field which comes under the scientific knowledge and experience of the chamber's members³⁷ (Article 1 of the PD 723, Paragraphs 1-2).

The arbitration is conducted either by one arbitrator or more, but has to have one presiding arbitrator according to the agreement about the procedure. If the agreement does not certify the number of the arbitrators, then the dispute resolution is assigned to two arbitrators together with one presiding arbitrator. It is mandatory that the chosen arbitrators must be included in the Chamber's list of approved arbitrators. The President of the Chamber has the authority to appoint the arbitrators themselves in cases where the litigant parties do not do so³⁷ (Article 4 of the PD 723, Paragraphs 1-4).

³⁷ Kalavros, F.,K., (1992), *Arbitration*, Sakkoulas Publishing, Athens-Komotini

The arbitral procedure is conducted at the Athens Department of the TCG and only after a formal request and with the agreement of the litigant parties, can the arbitration be conducted at any of the other regional departments of the TCG³⁸ (Article 5 of the PD 723).

The Administrative Board of the TCG, in December of every 2 years composes a list of at least 100 approved arbitrators. The parties awaiting appointment as approved arbitrators in the TCG, must have submitted their application before the 15th of November of the year where the composition of the new list takes place (that would be every two years). The essential qualifications for a member to be approved as an arbitrator from the Technical Chamber are to be certified, or be an emeritus member of it and have at least 15 years of experience in the field of engineering. The Board examines the applications and publishes the official list of approved arbitrators in a Newsletter. The announced list applies for the next two years until it is updated in the next two year period³⁸ (Article 6 of the PD 723, Paragraphs 1-4).

The claimant party for an arbitral dispute resolution submits his application (deemed as a Commencement Day) to the TCG and he also notifies the defendant for that action. In his application, the claimant must declare the issues of the conflict as well as his claims. Along with the request for arbitration, must be submitted a copy of the parties' agreement in which arbitration is specified as the chosen procedure for dispute resolution and then the name of the first arbitrator appointed by the claimant can be announced. Consequently, the defendant must appoint the arbitrator of his choice and communicate it to both the TCG and the claimant within 8 days. Alternatively, the parties can submit a joint application for arbitration including the above information. In all cases, after the appointment of the arbitrators from the parties, the president of TCG constitutes the arbitral court and appoints a secretary of the arbitration chosen among the Chamber's members⁴³ (Article 7 of the PD 723, Paragraphs 1-4).

Moreover, the President may within 10 days from the Commencement Day call the litigant parties to negotiate instead. In that case, the negotiation's result must be duly recorded. Instead of the President, a third person may be designated by the President to run the negotiation. This person can come from either the Arbitral committee or the Disciplinary Board of the Chamber. If the negotiator comes from the Arbitral Committee then, in the case of an unsuccessful negotiation, he/she cannot be arbitrator or presiding arbitrator for the same dispute³⁸ (Article 8 of the PD 723, Paragraphs 1-3).

³⁸ Kalavros, F.,K., (1992), *Arbitration*, Sakkoulas Publishing, Athens-Komotini

As far as the procedure of arbitration is concerned, after the arbitral court is constituted, it shall examine and investigate the issues of dispute and announce its decision within 90 days. However, the Court is likely to extend the duration of the procedure either at its initiative, or after a request by one of the litigant parties. The presiding arbitrator, or the arbitrator (in case of single member court) with the power of the Court's chairman, determines the "Court Day" (but no later after 8 days from his appointment) and calls the litigant parties to be present the appointed day. The litigant parties can attend the "Court Day", with or without their attorneys. They may also be represented by them, or joined by a technical advisor, or a member of the TCG as long as he is not included in the official list of Chamber's arbitrators during the period of the dispute resolution³⁹ (Article 9 of the PD 723, Paragraphs 1-3).

The remuneration and the expenses of the arbitrators and the secretary are determined through the arbitration award. The arbitral court can ask the parties to pay a part, or the whole amount of the procedure's expenses (remunerations and costs) in advance. Nevertheless, the precise amount of the procedure's expenses is determined and announced along with the announcement of the Court's award. The parties have always the right to ask from the President of the TCG to determine himself the remuneration of the court's members³⁹ (Article 10 of the PD 723, Paragraphs 1-2).

To conclude, the TCG has its own body of arbitrators, who can be assigned for the resolution of technical disputes following the provisions outlined above. However, for procedural details which are not included in the PD 723 or in the Arbitration agreement, they may follow the provisions of the C.Civ.P for Arbitration³⁹ (Article 2 of the PD 723). It should be mentioned that the procedure of arbitration which is conducted by the TCG is also used for international agreements, provided it is a term of the contract conducted between the parties. In that event, some provisions of the International Commercial Arbitration such as concerning the arbitrator's fees are adopted for the smooth operation of the procedure⁴⁰.

³⁹ Kalavros, F.,K., (1992), *Arbitration*, Sakkoulas Publishing, Athens-Komotini

⁴⁰ Appendix 11, Thanasis Liaramantzas, Phone contact

3 Arbitration and Adjudication in the UK Construction Industry

3.1 *Scope of Chapter*

The purpose of this chapter is to provide a substantial review on two formal dispute resolution methods in UK. Firstly, it reviews the traditional dispute resolution of arbitration under the rules of two institutions; the Institution of Civil Engineers (ICE) and the Society of Construction Arbitrators (SCA). While a brief description of the Construction Industry Model Arbitration Rules (CIMAR) is made. A great importance is given to the ICE Arbitration Procedure 2006 due to its international applicability. In consequence and particularly in section 3.3, the alternative dispute resolution method of adjudication and its application is discussed.

3.2 *Arbitration Rules in the UK CI*

In UK since 1965, Arbitration procedure has been governed by the Arbitration Acts 1950, 1975 and 1979¹. However, in 1996 the new Arbitration Act founded the principles to establish a more impartial tribunal with less unnecessary delays and expenses². Most of the construction contracts in the UK construction industry have anticipated arbitration as a means for dispute resolution¹ and there are a lot of established standards contracts to prove this trend, as well as formulated arbitration procedures regarding construction disputes.

The Society of Construction Arbitrators, produced in 1998, a number of special rules for the whole construction Industry, "The Construction Industry Model Arbitration Rules" (CIMAR) are examples which comply with the Arbitration Act 1996. These rules were also incorporated in the dispute resolution clauses of the Joint Contracts Tribunal (JCT) contracts and subcontracts, mainly used internally in the UK construction industry¹.

On the other hand, the Institution of Civil Engineers has established its own arbitration procedure, mainly for use with the ICE Conditions of Contracts family and New Engineering

¹ Hibbert, P., Newman, P., (1999), *ADR and Adjudication In Construction Disputes*, Blackwell Science Ltd, Cornwall

² Tait, J.N, (2007), Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

Contracts (NEC). Like the CIMAR rules, the ICE arbitration procedure is based on the provisions of the Arbitration Act 1996, however it can be used independently from the Act and thus make it even suitable to be operated on international contracts³.

It is essential to mention, that the latest publication of ICE, "Arbitration Procedure 2006" contains a 100 day arbitration procedure which encompasses both building and civil engineering. Further insight in the new procedures proposed from the ICE, will be made in the subsection 3.2.1.

3.2.1 Arbitration Procedure under ICE Rules

To begin with, according to ICE Rules, a dispute arises after a claim has been rejected or not been responded within a period of 28 days (Rule 2.1)⁴. Then, the arbitration proceedings commence when a party serves a Notice to Refer to the other party mentioning the subject in dispute. (Rules 2.2-2.3)⁴. Along with the Notice to Refer, or later, the party has to serve to the other party a list with the names of arbitrators (Notice to Concur) that they propose to be appointed as a sole arbitrator and the parties must agree within 14 days of that Notice to Concur (Rule 3)⁴. Alternatively, if the parties are not able to come to an agreement after 21 days of the Notice to Concur, the arbitrator is appointed by the President of ICE within 14 days from either's party application to do so.

After his appointment, the arbitrator may ask the parties to attend a preliminary meeting, where the parties can submit short statements regarding their personal perceptiona about the dispute, and along with the arbitrator, decide what kind of procedure (when it is not determined in the arbitration agreement), will be conducted. During the preliminary meeting, they can also discuss about other details which are cited in the Appendix 2 (Rule 6)⁴.

Among his powers to control the procedure, the arbitrator has the right to ask for assistance either legal, technical, or any other which he deems to be essential to assist him in the conduct of the arbitration⁴ (Rule 7.7).

As far as the conduct of arbitration is concerned, the Institution of Civil Engineers, is willing to make Arbitration a dispute resolution method suitable for all kind of disputes, and as a result

³ Tait, J.N, (2007), Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

⁴ Institution of Civil Engineers, (2006), *Arbitration Procedure 2006*, Thomas Telford Ltd, London

has established three different procedures depending upon the total sums of claims. The available procedures are: short procedure, expedited procedure and special procedure for experts. Each one of these procedures are reviewed in this section. The table below is the latest version published by the ICE and it demonstrates which procedure is suitable according to the total sum in issue⁵.

Procedure	Total sum in issue
Short procedure	< £50,000
Expedited	£50,000-£250,000
Special procedure for experts	> £250,001

Source: Institution of Civil Engineers, Arbitration Procedure 2006, Reproduced by the writer

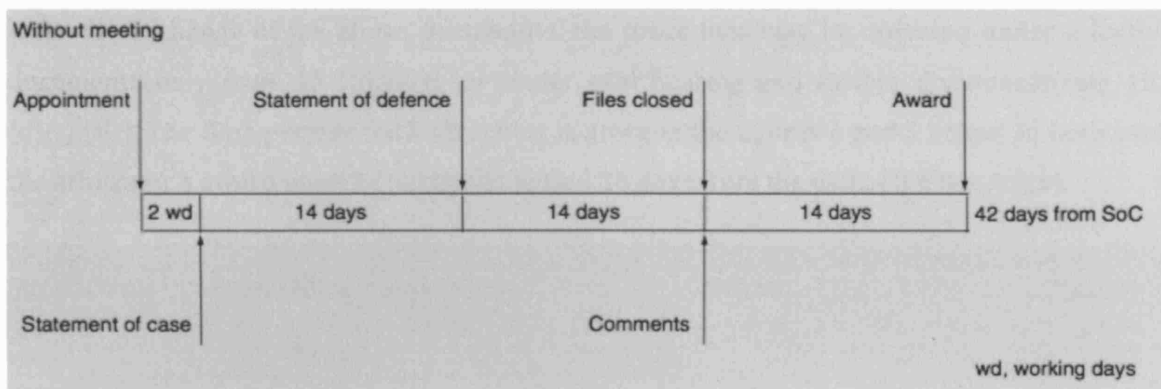
Table 2 -Value bands for procedure selection

The procedure which is used for the dispute resolution is usually determined according to the above table and stated in the arbitration agreement (Rule 1.4), or, it is decided after the dispute (Rule 6.4)⁶.

The short procedure is determined under Rule 14 and it is deemed suitable for claims which not exceed £50,000. There are two possible routes to operate the short procedure. The first one is conducted with an exchange of documents only and no meeting between the parties and the arbitrator is required. Within two working days following the appointment of the arbitrator, the claiming party must serve to the other party, and the arbitrator, a Statement of Case (SoC), which is a file where he determines his case⁵. Appendix 3 sets out the documents that the SoC must contain. In consequence, the responding party has 14 working days to respond and then either party has the right to comment within 14 working days on its opponent's file⁶ (Figure 2). Following the closures of all files the arbitrator shall publish an arbitrator award within 14 days time.

⁵ Tait, J.N, (2007), Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

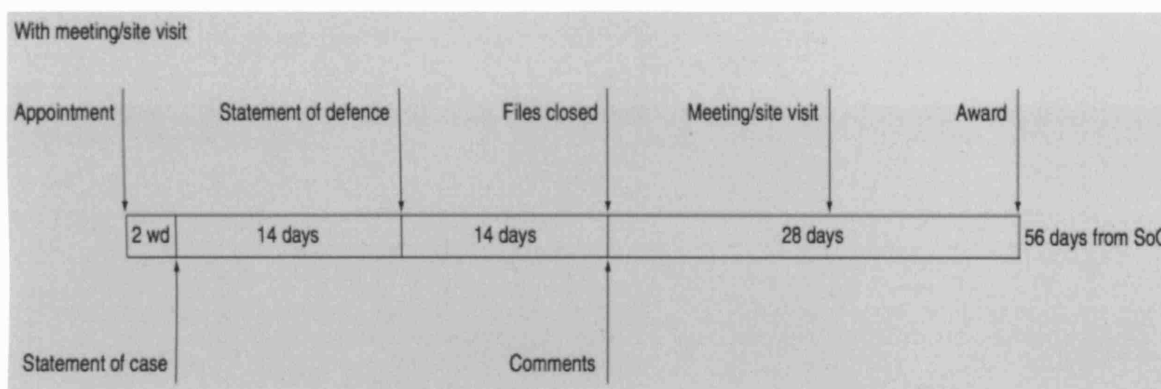
⁶ Institution of Civil Engineers, (2006), *Arbitration Procedure 2006*, Thomas Telford Ltd, London



Source: Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

Figure 2 -Time scale for short procedure without meeting

Alternatively, under Rule 14.8 the arbitrator may decide that a site inspection, or further documents, or a meeting is required in order to determine his award. In this case the procedure may be extended to 14 days (Figure 3).



Source: Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

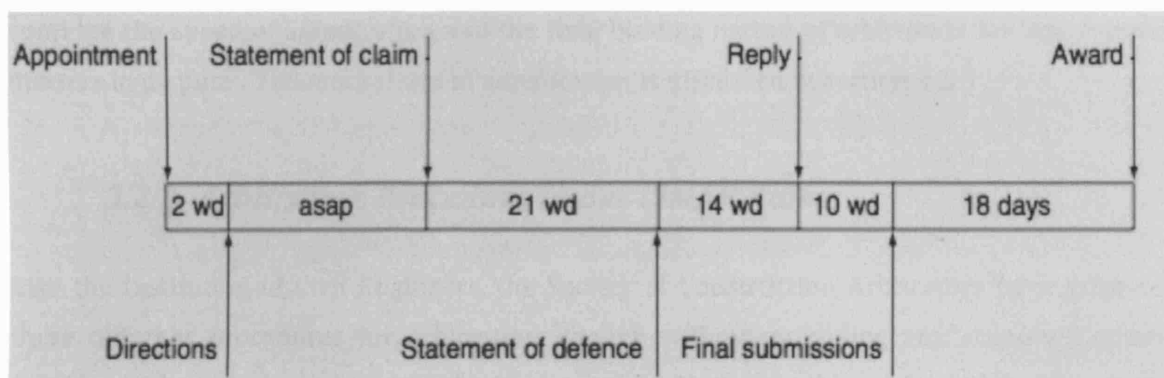
Figure 3 - Time scale for short procedure with meeting/site visit

The expedited procedure is suitable for claims between £50,000 and £250,000. The timescale of the procedure is established by the arbitrator within two days from his appointment and it must not run more than 100 days from the submission of the statement of claim. Under rule 15.3, the timescale must determine the following⁷:

- (a) A date for service of the statement of claim
- (b) A date for service of the defence within 21 working days after the Soc
- (c) A date for the service of the reply 14 working days after (b)

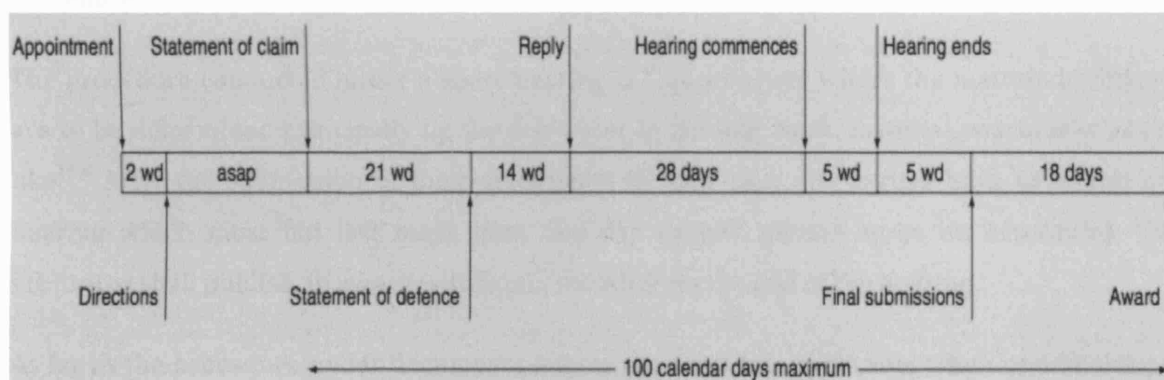
⁷ Institution of Civil Engineers, (2006), *Arbitration Procedure 2006*, Thomas Telford Ltd, London

After the exchange of the above documents, the procedure may be operated under a further documents only (rule 15.3(d)(iii)), or under oral hearing and further documents(rule 15.3 (d)(i)-(ii)). The time periods for both routes is given in the figures 4 and 5 below. In both cases the arbitrator's award must be published within 18 days from the end of the last stage⁸.



Source: Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

Figure 4 - Time scale for expedited procedure without hearing



Source: Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

Figure 5 - Time scale for expedited procedure with hearing

The special procedure for experts is ideally operated for claims over £250,001. After the agreement of the parties that experts' determination upon facts and issues is essential, each party must prepare a file to set out its case pursuant to the rule 16.2. The required documents each party must provide in its file are given in the Appendix 4.

⁸ Institution of Civil Engineers, (2006), *Arbitration Procedure 2006*, Thomas Telford Ltd, London

After an exchange of reports, or statements between the Experts, the Arbitrator sets a date for meeting where Experts can address the arbitrator and question each other⁹. Following the meeting with the Experts, the arbitrator may publish the arbitration award.

To conclude, the main purpose of the ICE 2006 procedure is to establish proceedings which can combine the speed of adjudication and the final binding nature of arbitration for less complex matters in dispute⁹. The mechanism of adjudication is discussed in section 3.3.

3.2.2 Arbitration Procedure under CIMAR Rules

Like the Institution of Civil Engineers, the Society of Construction Arbitrators have produced three different procedures for arbitration, though without providing any economic criteria within which each procedure should be operated. However, the arbitrator decides on his discretion which procedure is appropriate with the parties retaining their right under rule 6.2, to provide the arbitrator a proposal for the form of procedure to be followed¹⁰. The available procedures of arbitration under CIMAR Rules are: short hearing, documents only and full procedure.

The procedure conducted under a short hearing is “..appropriate where the matters in dispute are to be determined principally by the arbitrator inspecting work, material, machinery or the like¹⁰.” After the submission of their statements of their case, the parties have to attend the hearing which must not last more than one day (unless parties agree on extension). The arbitrator shall publish an award within one month from the end of the hearing.

As far as the procedure under documents only is concerned, is applicable when oral hearing is deemed unnecessary either “.. because the issues do not require oral evidence, or because the sums in dispute do not warrant the cost of the hearing¹⁰.” The examination of the dispute contains mainly an exchange of statements between the parties and submission of them to the arbitrator. Following the service of the last document, the arbitrator may publish an award within one month.

⁹ Tait, J.N, (2007), Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

¹⁰ Society of Construction Arbitrators, (2005), *Construction Industry Model Arbitration Rules*, Sweet and Maxwell Ltd, London

The full procedure is conducted when oral hearing and documents only procedures are not appropriate for the matter in dispute. Among the proceedings of the full procedure are the submission of statements of claims from each side of the parties in dispute, the examination of witnesses and experts and hearings.

Moreover, the Society of Construction Arbitrators have published a 100 Day Procedure which is not included in the CIMAR Rules, and neither is adopted by the JCT, however it stands as a separate document and can be adopted by agreements of the parties¹¹.

3.3 *Adjudication in UK Construction Industry*

The UK Government indicated a special concern for the Construction Industry and its potential problems which could lead to counterproductive routes and commissioned Sir Michael Latham to review the procurement and contractual arrangements in the domestic construction industry¹². Latham's report in 1994, "Constructing the Team" stressed the problems confronted by the Construction Industry and proposed Adjudication as a normal form of dispute resolution¹³. Finally, UK Government ratified Adjudication as a compulsory mean of construction dispute resolution with the introduction of the Housing Grants, Construction and Regeneration Act 1996 (HGCRA) which came into force in 1998¹⁴. Adjudication is governed by the conditions laid down in section 108 of the HGCRA¹⁵.

The establishment of adjudication has been enforced by a secondary legislation, the Scheme for Construction Contracts and applies when adjudication provisions are not included within the contracts. It should be stressed, that necessary amendments have been issued within JCT contracts since 1998 so that JCT standard forms comply with HGRCA¹².

¹¹ Tait, J.N., (2007), Proceedings of the Institution of Civil Engineers, *Management, Procurement and Law* 160, p117-127

¹² Hibbert, P., Newman, P., (1999), *ADR and Adjudication In Construction Disputes*, Blackwell Science Ltd, Cornwall

¹³ King, V., (1996), *Constructing the team: A US perspective*, website assessed on 3/05/08. Available at :<http://people.bath.ac.uk/ab2jep/Jonny/Management%20C/Latham%20Report/LATHAM.doc>

¹⁴ "Where should I go: Litigation, Arbitration, Mediation or Adjudication?", The Chartered Institute of Building members' newsletter, Mar-Apr/03, Issue 39, p.9

¹⁵ Riches, L.J., Danaster, C., (2004), *Construction adjudication*, Second edition, Blackwell Publishing, Cornwall

The following subsection reviews the more important provisions of the Scheme by trying to provide a substantial insight in the proceedings of adjudication.

3.3.1 Adjudication Procedure and the Scheme for Construction Contracts

As mentioned above, when no adjudication procedure which complies with section 108 of the HGCRA is included within the provisions of the construction contract, then the “Scheme” operates as a presumed part of the contractual agreement. For that reason, the insight into the procedure of adjudication will be given through the paragraphs of the “Scheme” while the reference to some parts of the HGCRA is deemed to be inevitable.

Either party has the right to refer a dispute to adjudication (referring party) and serve a written notice of his intention (Adjudication Notice) to the other party (Paragraph 1(a))¹⁶. The required statements in the Adjudication Notice are cited in the Appendix 5. Following the Notice to Refer, the person who is mentioned in the agreement is noticed by the referring party for its appointment as an adjudicator. If the adjudicator is not presumed in the agreement, the referring party has to appoint an adjudicator to carry out the procedure (Paragraph 2(1a))¹⁶, otherwise the referring can apply to a nominating body to appoint an adjudicator within 5 days from the party’s application (Paragraphs 2(1c) and 5(1)) No matter when the adjudicator is finally appointed, the referring party has 7 days from the Adjudication Notice to refer the dispute in writing (Referral Notice) to the adjudicator (Paragraph 7(1))¹⁶.

In order to come to a decision about the matter in dispute, the adjudicator has a number of powers such as requiring further documents to be served by the parties, making site visits, questioning any parties and witnesses involved, appointing experts and give directions concerning the time limits for the above proceedings (Paragraphs 13 and 15)¹⁶.

The basic principle of the HGCRA rules about the procedure of adjudication is to avoid any unnecessary costs and delays which are reproduced in the secondary legislation by Paragraph 12(b), and the adjudicator must follow this principle. Alternatively, the parties have the right at any time to seek alternative dispute resolutions other than adjudication¹⁷. Moreover, under the same paragraph, section (b), the adjudicator “shall act impartially in carrying out his duties and

¹⁶ Riches, L.J., Dancaaster, C., (2004), *Construction adjudication*, Second edition, Blackwell Publishing, Cornwall

¹⁷ Hibbert, P., Newman, P., (1999), *ADR and Adjudication In Construction Disputes*, Blackwell Science Ltd, Cornwall

shall act in accordance with any relevant terms of the contract and shall reach his decision in accordance with the applicable law in relation to the contract". This paragraph makes it clear that adjudication deals only with disputes which arise under the contract and basically is a procedure which determines the legal rights of the parties¹⁸.

Under paragraph 19, the adjudicator is required to make a decision concerning the matter in dispute, within 28 days time from the service of the Referral Notice. However, at the adjudicator's discretion and provided the referring party agrees, this time limit may be extended to 42 days. Parties also have the right to agree together for any extension of the 28 days period and to decide it soon after the service of the Referral Notice¹⁸. A possible reason for taking such measure would be the delay of appointing an adjudicator, though the HGCRA does not recommend the timescale of the adjudicator's decision under parties' agreement to be more than 35 days. Along with the announcement of the adjudication's decision, the adjudicator announces his fees, while for the costs of the proceedings parties are jointly liable, unless adjudicator decides otherwise (Paragraph 25)¹⁸.

Under the statements of Paragraph 20, the adjudication's decision is temporarily binding. This means, the parties are obliged to comply with the adjudicator's decision until it is finally determined by an arbitration award, or litigation's judgment. Alternatively, if the parties agree, they can make the adjudication's decision final¹⁸.

Lastly, there are four types of contractual agreements which are excluded from the order of Section 108 to refer contractual disputes in adjudication. These are:

- (a) Agreements under statute
- (b) Private Finance Initiative (PFI)
- (c) Finance agreements
- (d) Development agreements

Moreover, though HGCRA has made adjudication an inevitable method of dispute resolution for differences arising within the majority of construction contracts. However, this does not deprive the right of the parties to rely on other alternative resolution methods as long as they are compatible with the "...effect and/or the spirit of the Act" meaning to be the same equitable and

¹⁸ Riches, L.J., Dancaaster, C., (2004), *Construction adjudication*, Second edition, Blackwell Publishing, Cornwall

speedy as adjudication. Otherwise, the provisions of the Scheme become operative and the procedure of adjudication is followed¹⁹.

¹⁹ Hibbert, P., Newman, P., (1999), *ADR and Adjudication In Construction Disputes*, Blackwell Science Ltd, Cornwall

4 Comparison of the construction dispute resolution methods in Greece and UK

4.1 Scope of Chapter

The primary scope of this chapter is to critically appraise and compare the dispute resolution methods which are described in the two foregoing chapters. The comparison will be based on the literature reviewed in chapters 3 and 4 along with new statistical data and comments which are to be newly presented in this chapter. Four main themes will be discussed. The first part of the chapter discusses the general differences concerning the dispute resolution methods used in the construction industry in Greece and in the UK, while a deeper and more specific comparison on the characteristics of each procedure and how it applies in each country, follows in the second and third part of the chapter. The themes that will be discussed are:

- General comparison of the dispute methods used in Greece and the UK
- Standard forms of contracts
- Arbitral/neutral expert valuation conducted in Greece compared to adjudication conducted in UK
- Arbitration procedures conducted in Greece compared to arbitration procedure conducted in UK

4.2 General comparison of the dispute methods used in Greece and the UK

Chapter 2 identified the absence of unified legislation for dispute resolution in the Greek construction industry, the dispute resolution methods used will vary in relation to the kind of contract under which the dispute arises. Three categories of contracts are distinguished in the second chapter according to the different resolution procedures they use.

Greek legislation has established a special administrative and mandatory procedure which is followed only for traditional public contracts concerning agreements between the State and a private contractor, or a construction company. Under law 1418/84, the raising of “objection” and consequently the action of “healing request” (after the unsuccessful result of the “objection”) are

two long-term procedures the contractor cannot avoid if he wishes to seek a solution in the Civil Court. The main issue which has been noticed in the dispute resolution procedure used on traditional public contracts, is the omission of the public authorities to publish their decision within the time limits and as far as the “objection” is concerned the omission to publish a decision at all. The existing opinion in the construction industry about the procedures of “objection” and “healing request” is that “they rarely solve the problem and are seen as a required pre-procedure for the contractor to have the right to appeal to the court”¹. Moreover, contractors seem to have limited confidence and trust in the Supervising Authority and the settlement of their differences with the State by raising an “objection”, or through the action of the “healing request”. “It is just a time-consuming, bureaucratic procedure you have to follow until you finally get a jurisdiction concerning your claim from the civil court.”² Unfortunately, statistics of the cases referred to public authorities to settle differences arise under traditional public contracts, are difficult to obtain either from any Prefecture, or from the Greek Ministry of Environment, Urban Planning and Public Works.

As far as the concession agreements (BOT contracts) are concerned, Paragraph 9 of the Law 2052/92, gives the right to the parties committed in an agreement to refer their disputes to arbitration or arbitral/neutral expert valuation. However, projects undertaken under concession methods carry a lot of risk and they are usually ratified under statute, therefore the dispute resolution procedures which are presumed to be followed in every case are included terms in the special law formulated for each project.

The third category of contracts mentioned in the second chapter is private contracts. Parties, either individuals, or private construction companies under their initiative, choose to include in the clauses of their contract an arbitration agreement governed by the C.Civ.P rules for Arbitration, or an arbitration agreement governed by the rules of TCG.

Compared to Greece, where there are no rules produced particularly for construction disputes, with the arbitration procedures operated under the Technical Chamber of Greece being an exception, the UK construction industry has its own regulations for settling disputes. Apart from the Arbitration rules produced by the Society of Construction Arbitrators and the Institution of Civil Engineers, the UK government took some drastic measures against the construction industry’s adversarial nature and decreasing cash flow as a result with the introduction of the

¹ Appendix 11, Stefanos Gerasimou, Phone contact

² Appendix 11, Konstantinos Theodorou, Personal contact

Housing Grants, Construction and Regeneration Act 1996³ (HGCRA), and the establishment of adjudication procedures as a the first tier in the dispute resolution.

4.3 Standard forms of contracts

In the Greek construction industry, the use of standard forms of contracts is rare, especially for BOT and private projects⁴. This might be due to the distinction of the way each category of a contract settles likely disputes and other matters. On the other hand, in the UK there is a plethora of nominated bodies like the Royal Institute of British Architects (RIBA) and National Federation of Building Trades Employers which established the Joint Contracts Tribunal and which produces standard forms of contracts for building which includes dispute resolution clauses.

4.4 Arbitral/neutral expert valuation conducted in Greece compared to adjudication conducted in the UK

The process of adjudication does not appear in the Greek legal system. It is an unknown dispute resolution method and there is no accurate translation term in the Greek language without confusing it with judgement, or decision, or award. The reason for doing a comparison between the Greek arbitral/neutral expert valuation and the procedure of adjudication established by the HGCRA is that they both are contractual procedures and their intention is to confirm the parties' rights and obligations, with the main aim to prevent the intervention of litigation or arbitration⁵. However, they do differ in many aspects.

First of all, arbitral/neutral expert valuation is a mechanism, which is mainly used in BOT contracts when it is included in the terms of the contract and it is binding only if it is conducted by an arbitrator. Verveniotis, makes it plain, that contract evaluation can be undertaken either by a neutral third party, or an engineer, or an arbitrator. However, he does not exclude the

³ Minogue, A., *Law inaction*, Building magazine, 01/29/99

⁴ Verveniotis, G., (1993), *Execution of Public Works-Concession (BOT) agreements*, Sakkoula Publishing, Athens-Komotini

⁵ Gaitskell, R. 2005, *Trends in Construction Dispute Resolution*, Society of Construction Law Conference, May 14, 2005, Society of Construction Law, London, purchased from: www.scl.org.uk

collaboration of the neutral party, or of the engineer with an arbitrator in order to make the evaluation temporarily binding until it is overruled by the civil, or the arbitral court⁶.

Adjudication on the other hand, is a procedure which applies to all construction contracts (with some exceptions given in section 3.3.1.) and is temporarily binding for the parties until they seek the jurisdiction of litigation or arbitration. It is a new procedure, which showed an impressive increase in cases referred to it during the last 10 years. (Figure 6) Adjudication's success could undoubtedly be attributed to the strict time period of 28 days for an adjudicator to announce his decision, as well as the limited costs for the appointment of the adjudicator (in average between £90-£130/hour) compared to employing a solicitor, or a barrister⁷. Nevertheless, apart from the great benefits of adjudication, criticism points out drawbacks of some importance. For instance, in the "Construction Manager" magazine, a journalist admits that adjudication might not be very appropriate for complex disputes and big claims. The journalist also expresses his concerns that the 28-days time period of decision is likely to lead to rough and unfair outcomes for such disputes⁸. Moreover, the procedure of adjudication does not give enough time to the responding party to prepare his defence, thus giving the referral party a significant advantage⁷. Another problem which appeared to have serious impact in different cases is the enforcement of the adjudicator's decision. Adjudicator's decision is bounding for the parties but this does not ensure that one of the parties will not breach the decision, unless the adjudicator along with the announcement of his decision, gives also peremptory orders for a part, or whole of the decision. Riches and Dancaaster express the majority's argument concerning the primary legislation and how it deals with adjudication's enforcement⁹. This matter arose due to the *Macob Civil Engineering Ltd v Morrison Construction Ltd* case which led to the revision of the adjudication's enforcement pattern. Now the most usual way of enforcement, is by summary judgment in court proceedings¹⁰.

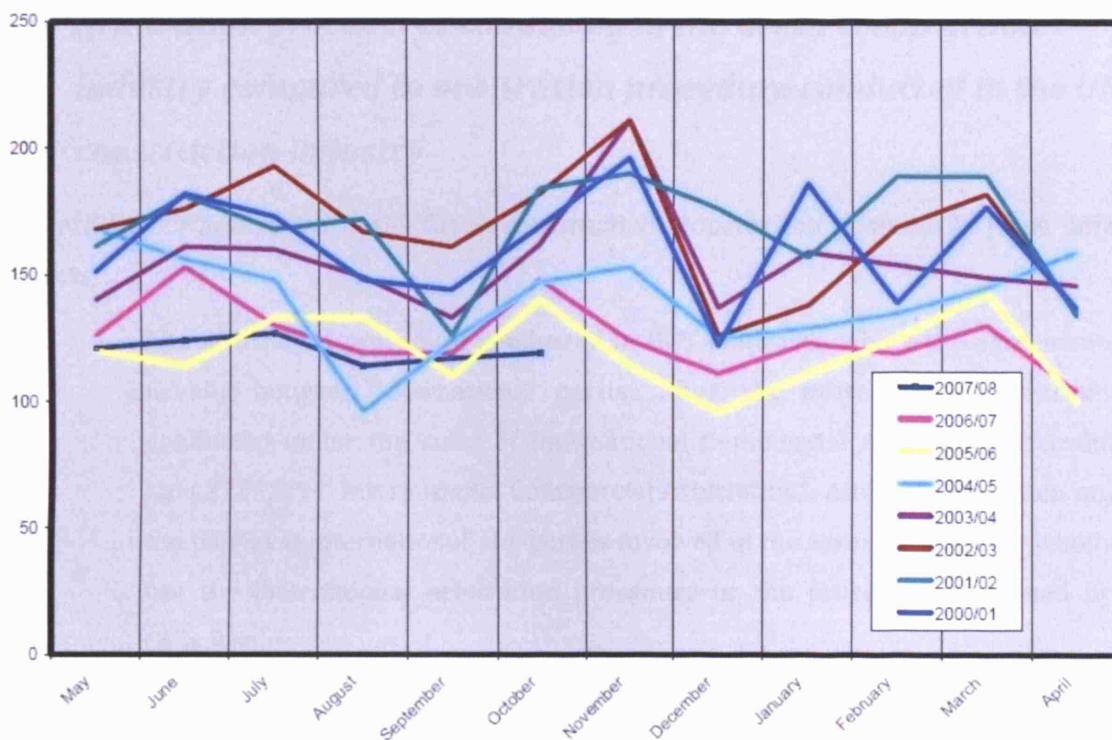
⁶ Verveniotis, G., (1993), *Execution of Public Works-Concession (BOT) agreements*, Sakkoulas Publishing, Athens

⁷ Knowles, J.R., *How to prepare a case for adjudication*, ASI Journal, 08/00, p.37

⁸ *Let's settle this* in Construction Management 01/05, p.18-21

⁹ Riches, L.J., Dancaaster, C., (2004), *Construction adjudication*, Second edition, Blackwell Publishing, Cornwall

¹⁰ <http://www.adjudication.co.uk/enforcement.htm> Accessed on 15/08/2008



Source: Adjudication Reporting Centre, Report 9

Figure 6 -Fluctuations in adjudication referrals

The last report of Adjudication Reporting Centre which runs a research project about adjudication and its processes along with the support of the Adjudication Nominating Bodies (ANBs), identifies a continuing decline in the number of referrals to adjudication. The number of cases referred to the ANBs according to the report, at the first year of HGCRA was 184. A 600% growth was reported for the second year, while at the 2nd semester of 2007 there was a negative decline of -4% with just 722 cases reported by the ANBs¹¹. Relative fluctuations in the number of adjudication cases through all these years can be seen in the Figure 6. The continuing decline might probably be interpreted as a negative perception about adjudication, or a shift of the construction industry in alternative ways of dispute resolution.

¹¹ Adjudication Reporting Centre, (2008), *Research analysis of the progress of adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs)-Report 9*, Glasgow Caledonian University, retrieved on: 20/08/08, available at: <http://www.adjudication.gcal.ac.uk/>

4.5 Arbitration procedures conducted in the Greek construction industry compared to arbitration procedure conducted in the UK construction industry

The practice of arbitration in the Greek construction industry can be found in three different aspects;

- The arbitration procedure conducted in BOT contracts, where the agreements are usually between international parties, thus the procedure of arbitration is conducted under the rules of International Commercial Arbitration according to Law 2735/99-“ International Commercial Arbitration”. Alternatively, when none of the parties is international, the parties involved in the agreement decide whether to use the international arbitration procedure or the procedure, governed by the C.Civ.P rules.
- The arbitration procedure conducted under the rules of C.Civ.P for disputes arising within private agreements, and lastly
- The arbitration procedure conducted under the rules of the TCG (PD 723), but only for disputes, which come under the scientific technical knowledge of the engineers.

There are slight differences between the rules of Arbitration under the C.Civ.P and under the TCG since matters, which are not settled by the articles of the PD 723 the procedure of the TCG, follows the provisions of the C.Civ.P for arbitration. However, the procedure of the TCG applies also in international agreements provided it is a term of the contract and adopts same provisions and rules of the International Commercial Arbitration rules.

The main drawback of the arbitration rules, which apply in the Greek construction industry is the absence of setting specific guidelines concerning the timescales and procedures regarding the arbitration's operation. Both matters are subject to the terms of the arbitration agreement signed by the parties and can differ from case to case. Alternatively, it is at the arbitrator's discretion to set the time limits for the proceedings with an exception of the 90 days award from the constitution of the arbitral court, which is presumed by the arbitration procedure of the TCG.

While arbitration procedures in Greece seem quite unsettled and unformulated, the practice of Arbitration in all sectors, but particularly in the construction industry, changed dramatically in

the UK after the Arbitration Act 1996¹². The basic intention of The Arbitration Act 1996 was to establish principles like “fair resolution of disputes by an impartial tribunal without unnecessary delay or expense”¹³, and these principles are adopted by the construction industry. First, the Society of Construction Arbitrators (SCA) in 1998 published the Construction Industry Model Arbitration Rules (CIMAR) which provides three different procedures according to the nature of the dispute, while in 2003 the SCA decided to publish a standard 100-days procedure offering a significant virtue to arbitration as a dispute resolution method for construction matters of less than one million pounds¹⁴. Moreover, an alternative arbitration procedure has been proposed since 2006 by the Institute of Civil Engineers (ICE) where different proceedings are followed proportionate to the amount of claim, including also, a 100-days procedure. The substantial difference from the CIMAR rules is that the ICE rules encompass both building and civil engineering contracts¹⁵.

It is remarkable to determine the way each country perceives the procedure of Arbitration. While the UK Government decided to amend the provisions of the Arbitration Act and tried to transform arbitration to an efficient dispute resolution method, an attempt which was also followed by the construction industry, Greek legislation keeps a more “numb” position against arbitration. The Greek construction industry has not showed any interest in the procedure of arbitration either. Alternatively, in the UK the SCA’s 100-day procedure is a result of a feedback within the construction industry¹⁴ and the ICE arbitration procedure has been amended several times through the last years as a result of feedback for the ICE arbitration procedure via questionnaires filled by the construction industry users¹⁵. It is difficult to obtain information regarding the number of cases referred to arbitration each year in Greece, except those which are referred to the TCG. The approximate number of 10 cases undertaken under the arbitration procedure of the TCG¹⁶, indicates the temperate preference of the Greek construction industry for solving its disputes through arbitration. This temperate preference might be due to paragraph 5 of Article 882 of the C.Civ.P according to which the arbitration costs might be born

¹² Powell-Smith, V., et al., (1994), 2nd Edition, *Construction Arbitrations*, Blackwell Science, Cornwall

¹³ Tait, J.N, (2007), *Proceedings of the Institution of Civil Engineers, Management, Procurement and Law* 160, p117-127

¹⁴ *Let’s settle this* in *Construction Management*, 01/05, p.18-21

¹⁵ <http://www.ice.org.uk> Accessed on 15/08/2008

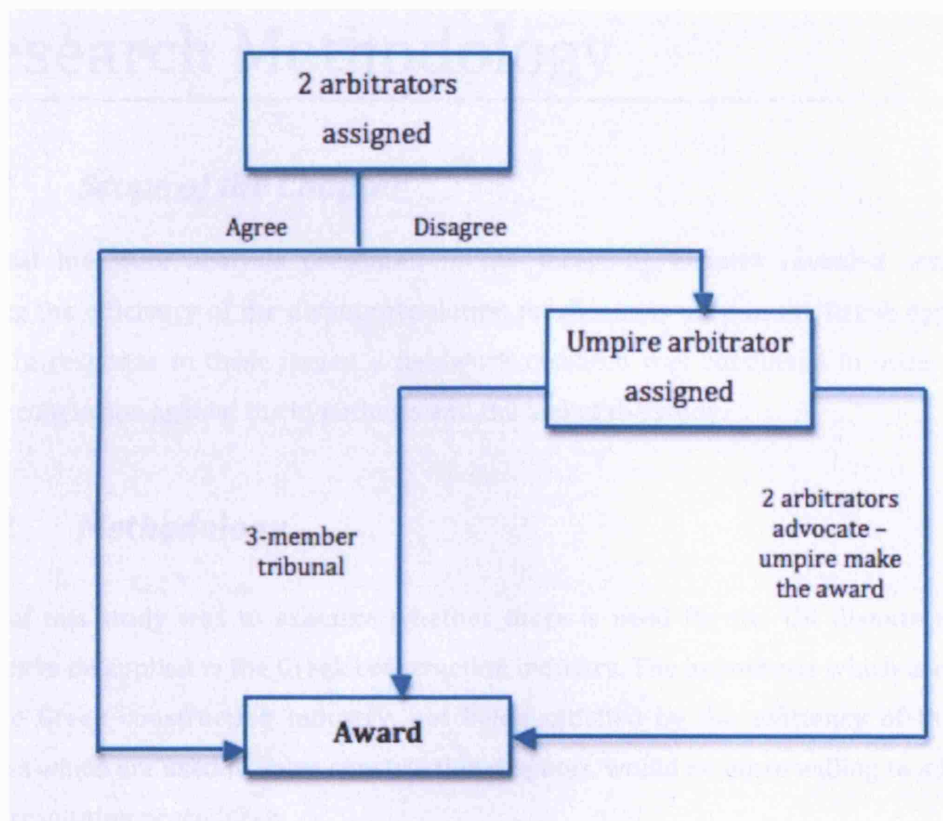
¹⁶ Appendix 11, Thanasis Liaramanzas, Phone contact

only by one party, a risk which parties do not wish to take, while for the short procedures of ICE, the parties share the arbitration costs¹⁷.

Throughout the foregoing chapters' review of the arbitration procedure conducted in both countries, it was noticed that the Greek rules for arbitration stipulate a 3-member tribunal compared to ICE and CIMAR rules which stipulate the practice of arbitration by a sole arbitrator. However, the Arbitration Act 1996 contains also provisions for procedures operated by two or three arbitrators¹⁸. Uff argues that the practice of Arbitration by two or more arbitrators might be unusual in construction cases, though the construction industry could consider it in terms of "cost effectiveness and satisfactory procedures" for more complex projects¹⁸. For instance, when each party appoints one arbitrator it could avoid the costs of assigning a lawyer. The event of appointing three arbitrators is stimulated only after the disagreement of the two arbitrators. Then, it is up to the parties whether they want to proceed in a 3-member tribunal, or assign the two arbitrators to can act like advocates and the third arbitrator (umpire) to make the award. (Figure 7)

¹⁷ Tait, J.N, (2007), *Proceedings of the Institution of Civil Engineers, Management, Procurement and Law* 160, p117-127

¹⁸ Uff, J., (2002), *Arbitration with the benefit of the Construction Act*, Society of Construction Law Conference, November 12, 2002, Society of Construction Law, London, purchased from: www.scl.org.uk



Source: Produced by the author

Figure 7 - The process of arbitration conducted by two or more arbitrators

To sum up, the Greek construction industry in general appears to have no confidence in the out-court dispute resolution methods in general. In the BOT agreements, alternative dispute resolution methods are used quite regularly, (Appendices A, B, C) however, the private sector expressed its disappointment for the resolution mechanisms used in traditional public contracts. Moreover, while the arbitrator's fees, as seen in Table 1, are not unreasonably high, the cases referred to arbitration for dispute resolution, remains unsatisfactory. On the other hand, the UK construction industry is more concerned and proactive, having a continuing interest in improving the construction dispute resolution methods.

The question which arises from the above is: Why has the Greek construction industry no confidence in the arbitration and the other out-of court dispute resolution mechanisms, and how could the effectiveness of these procedures to be improved? Could the dispute resolution provisions used in the UK construction industry be adopted by the Greek construction industry?

5 Research Methodology

5.1 *Scope of the Chapter*

The critical literature analysis presented in the foregoing chapter revealed some issues concerning the efficiency of the dispute resolution mechanisms used in the Greek construction industry. In response to these issues, a fieldwork research was conducted in order to try to come to a conclusion against the hypothesis and the aim of the study.

5.2 *Methodology*

The aim of this study was to examine whether there is need for the UK dispute resolution procedures to be applied in the Greek construction industry. The hypothesis which is embraced, is that the Greek construction industry, not being satisfied by the efficiency of the current procedures which are used to solve construction disputes, would be more willing to adopt some of the UK resolution procedures.

Thereupon, a fieldwork research was carried out with the use of a case study approach. Based on the issues revealed from the literature review and its analysis, a questionnaire of seven primary questions was prepared. The questionnaire was designed in order to encompass questions related to the main aim and hypothesis of the thesis. The questionnaire can be found in Appendix 6. Most of the questions contained in the questionnaire interview are open-ended, thereby seeking to collect people's opinions and views and finally to be able to make a discussion as a result of the answers.

The questions are split in three categories. The first part of the questionnaire seeks to gather general comments about the dispute resolution systems used currently in the Greek construction industry. The questions in the second part focus on comparative issues, which have been identified in the earlier literature analysis. Last but not least, the third part of questionnaire requires the interviewees to do their own appraisal about the procedures of construction arbitration and adjudication in the UK based on the summary (Appendix 7) provided to them. Moreover, the respondents are asked to consider the encompassment of the main features of the UK dispute resolution procedures and make their recommendations for the Greek construction industry.

The interview's questions were posted via email to the interviewees and the answers were retrieved either by a telephone interview, or by a written response. Due to the limited time and sample, no pilot study was conducted.

The initial step of the fieldwork research was to find practitioners in Greece willing to share their experience and personal views. The following steps were used for the case studies:

1. Potential interviewees were identified within personal contacts as well as within a research on internet.
2. The people deemed suitable to participate in the research were contacted via email letters and consequently through telephone conversations.
3. Finally the interview questionnaires were posted via email to the practitioners who had agreed to participate in the research along with a summary of UK's adjudication and the ICE and CIMAR rules/procedures for arbitration.
4. Feedback from the interviewees was given via either email response or by a telephone conversation.

Unfortunately, several limitations were faced throughout the selection of the interviewees. The unsatisfactory number of people practicing in construction disputes was the basic obstacle to the research. Therefore, an approach to people with different specializations was made for instance, people practicing the law specializing in public contracts, or people specializing in arbitration in general. While there were few people willing to help, there were even more who did not wish to be involved in the research with the excuse of it being "outside of their knowledge" or simply "being too busy".

To conclude, the limited number of interviewees should not be interpreted as incomplete findings and conclusions, which do not represent the Greek construction industry. On the contrary, Yin cited by Tellis argues that "even a single case can be considered acceptable, provided it meets the established objectives"¹.

¹ Tellis, W., (1997, July), Introduction to case study [68 paragraphs], *The Qualitative Report* [On-line serial], 3(2), Retrieved on 01/09/08, available at: <http://www.nova.edu/ssss/QR/QR3-2/tellis1.html>

6 Fieldwork Analysis

6.1 Scope of Chapter

This chapter provides the analysis of the fieldwork results. The answers of the questions will be summarised and discussed question-by-question. One of the prospects of the analysis is to draw a broad picture of the dominating climate of opinions in Greece regarding the consideration of practitioners for encompassing some of the UK features in the construction dispute resolution methods. Thereafter, the opinions discussed in this chapter will be used to draw some final conclusive thoughts and recommendations.

6.2 Analysis and discussion of fieldwork results

Before starting the analysis it should be borne in mind that the sample comes from different areas of knowledge and practice and this could influence their answers. The sample participated in the fieldwork research can be found in the Appendix 7.

Question 1. The construction disputes in Greece are settled through different procedures as presumed by the Greek legislation. For instance, the disputes arising under traditional public contracts are mandatory settled according to the provisions for dispute resolution of the Law 1418/84. On the contrary, the disputes arising under BOT projects can be settled according to the provisions of the Law 2052/92, or the provisions for dispute resolution of the special ratified laws for each project. As far as the private disputes in construction industry are concerned, the parties have the right to refer their dispute to arbitration. In that event, arbitration can be conducted either under the Technical Chamber of Greece (only for technical disputes), or under the general arbitration rules of the C.Civ.P.

In your perception, would it be better if the Greek legislation adopted a more unified dispute resolution system for settling construction disputes the same way in all kind of contracts, or at least adopted a unified system excluding from its provisions some projects and/or contracts with specific characteristics?

Throughout the literature review it was identified the difference between the Greek and the UK legislation concerning the settlement of construction disputes. The UK system does not stipulate

different procedures for public and private projects, apart from some very special exceptions. This question examines the respondent's view about the current distinction of public and private projects concerning the dispute resolution procedures followed in Greece.

Liaramantzas is very straight by stating: "There should be a unified system for solving construction dispute¹." On the other hand, Nikolopoulos pays more attention to the drawbacks of the dispute resolution methods used in public contracts. He recognizes the involvement of numerous procedures and authorities in the settlement of disputes on public contracts and makes a reference to its consequences; like the bureaucracy, the possible lack of transparency from the side of the public sector and therefore a lack of confidence in the procedure from the side of the private party to the contract. Considering the above, he reckons that the establishment of common rules and procedures in construction projects could result in a speedier settlement of the disputes and conflicts, and finally, would enhance the disputants' perception of fairness².

While it was not part of the question, Adamoudis referred to the Greek legislation and how it acts against the private party's interest concerning the traditional public-private agreements³. He shares Nikolopoulos's view about the establishment of common rules and procedures for resolving construction disputes while he thinks it is also essential for some construction occasions to be excluded from these rules due to the exceptional uniqueness and complexity of such construction projects².

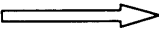
From the above, it highlights the explicit negative criticism which Greek practitioners have concerning the discrimination of the legislation between the traditional public projects and the private projects. Thereupon, it is not surprising that all of the respondents agree on the benefits of establishing dispute resolution rules and processes applicable to all kinds of contracts.

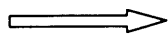
¹ Appendix 11, Thanasis Liaramantzas, Phone interview

² Appendix 11, Nasos Nikolopoulos, Written interview

³ Appendix 11, Charalampos Adamoudis, Written interview

Question 2. The out of court dispute resolution mechanisms for disputes arise under traditional public contracts (according to the provisions of the Law 1418/84) are:

“Objection”  Time limit for the announcement of the decision: 2 months

“Healing request”  Time limit for the announcement of the decision: 3 months

Both procedures are mandatory for the contractor, in order to reserve his right to refer the dispute to the civil court. The omission of the appropriate public authority to announce its decision is considered as a negative answer to the contractor’s claim.

The usual outcome of the above mandatory and bureaucratic procedures is the announcement of out-of time decisions against the contractor’s “objection” and/or “healing request” or the omission of the proper authority to publish a decision against the contractor’s “objection”. Both outcomes are considered as negative decisions but in the meanwhile valuable time has been wasted, while the dispute finally ends up to be a long-battle in the court.

Do you have any recommendations for the improvement of the above administrative procedures? In the event of not replacing these procedures, how could they be more effective?

The question uses the issues revealed from the literature appraisal and seeks some recommending answers concerning the problematic procedures of “objection” and “healing request”

Adamoudis verifies that the delayed and/or omitted decisions from the side of the Greek public authorities are usual for the public-private agreements. Moreover, public authorities are not obligated to provide any reason for such an action. However, he recognizes that there has already been an attempt from the side of the Greek legislation to establish a control mechanism concerning the observance of the time limits mentioned above. His further recommendations for the improvement of the current process is that the system should encompass a speedy out of court procedure thus giving the advantages of time to the parties by knowing whether they

should proceed to another dispute method or not without losing valuable time⁴. Nikolopoulos, believes that the time limits given to the administrative authorities to publish their decision should be decreased to the minimum possible, while Liaramantzas had no comment particularly on this question due to his limited knowledge on the dispute resolution methods for private contracts⁵.

Nikolopoulos comments verify the criticism presented in Chapter 4 about the “dysfunction” of the processes that parties must follow in the event of a disagreement, or conflict, with the Directing Service. Both respondents in this question think that the 8 months minimum time that the referent party of the dispute (usually from the side of the private sector) must wait for a decision, which might never be published, is far too long. They recommend that further measures should be taken in order to eliminate the problem, which arises from these long time limits.

Question 3. Both ICE Arbitration rules (of Institute of Civil Engineers) and Adjudication rules can apply in international agreements as long as the construction works take place within the UK. In Greece, the international agreements for domestic projects use the rules of International Arbitration according to Law 2735/1999.

Do you think the existence of Arbitration rules, which can apply in both domestic and international agreements would be more practical and beneficial for the users of arbitration procedure?

All of the respondents agreed that it would be of benefit for the construction industry to make their dispute resolution procedures applicable in international agreements, though Nikolopoulos argues that in many cases it is inevitable not to distinguish domestic and international rules, but he adds however, “that from personal experience I think, encompassing the international arbitration rules in those of the C.Civ.P it would be an advantage for the construction industry”⁵. Nikolopoulos specializes in international arbitration and is one of the founding members of the independent Non-Profitable Organization, Hellenic Arbitration Initiative (HAI). Adamoudis, believes procedural similarities in the international and national arbitration rules would first of all increase the functionality of the arbitral procedure itself, and secondly would decrease the perceived business risk for the construction industry. According to his opinion, construction players would be more willing to undertake risky projects if they knew

⁴ Appendix 11, Charalampos Adamoudis, Written interview

⁵ Appendix 11, Nasos Nikolopoulos, Written interview

that the internationally applicable rules of arbitration were going to be applied⁶. The fact that construction industry would feel more confident about the dispute resolution methods of arbitration would result in a feeling of more confidence within its agreements.

It seems from the above expressed opinions, that while the domestic rules for arbitration have not yet encompassed international provisions, practitioners strongly believe it is vital for the greater acceptance of the procedure. Moreover, Adamoudis has made a very important point concerning the productivity of the construction industry being related to its confidence in the dispute resolution procedures.

Question 4. The arbitration Act in the UK and therefore the ICE and CIMAR rules for arbitration anticipate the appointment of a sole arbitrator to solve the dispute. On the contrary, the provisions of the C.Civ.P for arbitration (if not stipulated otherwise in the arbitration agreement) anticipates the constitution of a three-member tribunal.

Is it better in your perception the conduction of arbitration by three arbitrators? If yes, why is that?

The difference in the number of arbitrators stipulated by the Greek and the UK arbitration rules were identified in the earlier literature analysis. A criticism from the UK's side was already presented in chapter 4. This question seeks to gather the opinion of the Greek practitioners concerning the number of the arbitrators within arbitration.

All interviewees argue that the conduct of the arbitral tribunal by several arbitrators is likely to result to a fairer award than the conduct by a sole arbitrator. Nikolopoulos though, deems it wiser that the number of the arbitrators be decided according to the complexity and the importance of the dispute⁷. Adamoudis indicates, that unless the sole arbitrator is not a person of common trust, it is preferable that the arbitration to be conducted by several arbitrators⁶. Liaramantzas shares the other interviewees' opinions about the benefits of several arbitrators conducting the tribunal⁸. However his personal experience comes across in his argument. He reveals that it is very common for the arbitrators to act partially that is, each one of the two

⁶ Appendix 11, Charalampos Adamoudis, Written interview

⁷ Appendix 11, Nasos Nikolopoulos, Written interview

⁸ Appendix 11, Thanasis Liaramantzas, Phone interview

arbitrators appointed by the parties to be influenced by their appointed party instead of acting impartially. For that reason, he recommends arbitrators to be appointed by a nominating body and not by the disputant parties. To conclude, the main point, which is made by Liaramantzas and Adamoudis is that several arbitrators ensure the exchange of opinions, scientific knowledge and experience.

As far as the number of arbitrators publishing an arbitral award is concerned, Greek practitioners expressed a hesitation on the parties appointing a sole arbitrator to conduct the arbitration. Nikolopoulos's opinion coincides with the one cited by Uff in chapter 4. Uff in examining the provisions of the Arbitration Act concerning the conduct of arbitration by several arbitrators came to the conclusion that it is more suitable for complex disputes. Liaramantzas made a point about the arbitrators acting sometimes like advocates of the parties who appointed them. While this happens against the Greek Arbitration rules (articles obligate the arbitrators to act impartially), the UK Arbitration Act gives the right to the parties to choose whether the two arbitrators act like advocates and the umpire arbitrator make the award, or like members of the three member tribunal.

Question 5. The Institute of Civil Engineers has established three different procedures which are applied proportionally to the amount of claim. Thereafter, the length of arbitration fluctuates between 42 and 100 days. On the other hand the provisions of C.Civ.P in Greece do not set time periods for the conduct of arbitration (the 90-days procedure of TCG is an exception) and as a result arbitration is not preferred by the construction industry.

Do you think the establishment of a more flexible procedures (like ICE arbitration procedure and CIMAR rules) could contribute to the increase of Greek construction disputes which are referred to arbitration?

The scope of the question was to examine the possibilities of transforming the Greek dispute resolution methods in the construction industry to a position closer to those applying in UK construction contracts. This question is focused on the arbitral procedures of the ICE and the SCA.

The respondents' answers revealed two problems regarding the Greek Arbitral procedure; namely the lack of the strict procedural timescales for the cases conducted under the general

rules of arbitration of C.Civ.P⁹ and the rare observance of the 90 days time limit stipulated by the arbitration procedure of the TCG for the publication of the award¹⁰. Liaramantzas is a member of the TCG and participated in many cases solved by arbitration and explains: “in contrast with the aim of arbitration which is the conduct of a speedy procedure, the cases which are referred to the TCG for dispute resolution are never solved not even after 190 days.¹¹” According to his experience, the parties themselves hold back the procedure for two reasons. Firstly, to gain time and to gather the evidence they need to support their case, or their defense, and secondly, they use the pending procedure and the time awaiting the award of claim in order to show more liquidity to their collaborators. Parties assert their collaborators that a big award of claim is coming and thus they will have the monies to meet their monetary obligations.

All of the interviewees share the same opinions as Nikolopoulos; in that the Greek dispute resolution system should adopt a flexible arbitration procedure like the one proposed by the ICE, where different proceedings are conducted according to a specific classification of the claims, and as a result, this could improve the main context of the Greek construction arbitration¹¹. Adamoudis adds that such a transformation could increase the number of interested parties for construction dispute resolution under the arbitral procedure⁹.

Question 6. The Housing Grants, Construction and Regeneration Act 1996 has established the alternative dispute resolution method of adjudication, mandatory for the construction disputes. The adjudication procedure is more suitable to small size of claims (the first years of its application a claim of £300,000 considered to be a big legal case)^{*}. Moreover, the dispute settlement with the use of adjudication is very common in the UK construction industry due to its speedy procedure; in 2005 approximately 2,500 construction cases were referred to adjudication.

(i) Do you think the alternative dispute resolution procedures are common in the Greek construction industry?

This question introduced to the Greek practitioners the procedure of adjudication. The interviewees were asked to determine whether adjudication could be applicable to the Greek construction industry, or not. Firstly, they are asked to share their perception of how common the alternative dispute resolutions (ADR) are in the Greek construction environment.

⁹ Appendix 11, Charalampos Adamoudis, Written interview

¹⁰ Appendix 11, Thanasis Liaramantzas, Phone interview

¹¹ Appendix 11, Nasos Nikolopoulos, Written interview

In the first part of the question the answer of the respondents was unanimously negative. Nikolopoulos makes himself explicit by stressing: that “..they are unknown in the Greek environment in general¹²”. Liaramantzas discloses a representative number of less than 100 cases (this number does not refer only to construction cases) being referred to arbitration every year, which explains the limited number of 10 cases resolved by the TCG annually, as discussed in an earlier chapter¹³. Being himself involved in the administrative procedures of the TCG’s arbitration process, he reveals that one of the reasons for this happening is the denial of the arbitrators to undertake cases. Due to the unsatisfactory arbitrators’ remunerations, arbitrators decline to undertake these responsibilities for such low remunerations. Adamoudis admits that alternative dispute resolution methods are uncommon in the construction industry due to the general attitude of the Greek disputants to delay the resolution proceedings¹⁴; an attitude which has been also revealed by Liaramantzas in an earlier question.

(ii) Could a speedy and effective procedure like adjudication contributes to the increase of alternative dispute resolution methods in the Greek construction industry? How would the construction industry react to the establishment of a procedure relative to adjudication in your opinion?

Practitioners deem that due to the benefits of time and costs distinguished in the UK adjudication, the Greek construction industry would react positively against the establishment of a procedure relative to adjudication¹². Adamoudis reckons that the application of adjudication could change the situation in construction dramatically; apart from improving the way construction disputes were settled, adjudication could temporary bind the parties to the contractual terms and as a result could eventually have a positive impact in the transactions of the industry¹⁴.

¹² Appendix 11, Nasos Nikolopoulos, Written interview

¹³ Appendix 11, Thanasis Liaramantzas, Phone interview

¹⁴ Appendix 11, Charalampos Adamoudis, Written interview

Question 7

(i) What is your opinion for the UK system regarding the alternative resolution of disputes arising in the construction industry?

With this question, the parties are actually called on to make their own appraisal of the British dispute resolution system. The concepts of the British system, which have been introduced to the interviewees-practitioners, are those of arbitration and adjudication. The respondents' answers will mirror the procedures, which would fit better into the Greek construction "climate".

(ii) Given the Greek factuality, do you reckon that the Greek legislation could adopt some of the features of the UK system concerning the construction disputes and their settlement? If yes, which procedure (between adjudication and arbitration) you consider to be the more suitable to the Greek construction industry and its needs?

All of the practitioners admit the existence of a numerous positive characteristics within both procedures of arbitration (either under ICE rules, or under CIMAR rules) and adjudication. Based on the foregoing critical literature review, the Greek arbitration procedures of C.Civ.P and TCG are quite unformulated compared to the UK arbitration procedures complying with the Arbitration Act 1996; thereupon, the positive perception of the interviewees about the UK dispute resolution mechanisms was not unexpected.

The respondents showed no hesitation on recommending the encompassment of the some effective characteristics they identified in the UK procedures of arbitration and adjudication. Two of the respondents expressed their preference to arbitration. While he does not name it, Nikolopoulos mirrors the procedure of arbitration by recommending that the Greek construction industry needs the establishment of a speedier, effective dispute resolution method conducted with committed time limits. Moreover, he recommends that the outcome of this procedure should be binding and therefore to exclude the right of the parties to proceed to further resolution procedures¹⁵. Liaramantzas focuses more on the improvement of the TCG's arbitration procedure and he reckons that ICE rules could be an ideal example for that. He particularly distinguishes the advantages of the classification of the cases proportionate to the

¹⁵ Appendix 11, Nasos Nikolopoulos, Written interview

amount of claim¹⁶. Adamoudis on the other hand, finds adjudication more efficient due to the speedy and temporary binding nature of its procedure. However, he points out that particular attention should be paid on the establishment of a mechanism which can make sure all the parties including those coming from the public sector, do not breach the temporarily binding decision of adjudication¹⁷.

The summary conclusion from the above discussion is that the criticism and appraisal of the literature review presented in earlier chapters in general terms agrees with the opinions expressed from the Greek practitioners. The “dysfunction” of the Greek out of court methods regarding the resolution of construction disputes resolution is a fact and drastic improvement seems an urgent need for the general benefit of the Greek construction industry. Therefore, it is important that the first message coming from the Greek practitioners is to stay positive to the idea of adopting of some of the characteristics of the UK dispute resolution procedures.

¹⁶ Appendix 11, Thanasis Liaramantzas, Phone interview

¹⁷ Appendix 11, Charalampos Adamoudis, Written interview

7 Conclusion

7.1 Scope of Chapter

This chapter will draw some conclusive thoughts and will provide some recommendations. The chapter will firstly review the aim of the study and thereafter conclusions will be drawn based on the initial objectives set out in Chapter 1. Moreover, the initial hypothesis made at the beginning of the study will be challenged to establish whether it is correct, or not and as a result of this challenge and recommendations will be made.

7.2 Dissertation Aim

The aim of this study was to evaluate whether the UK procedures used for the resolution of the construction disputes could be adopted by the Greek construction industry. A thorough examination of the formal dispute resolution procedures of arbitration and adjudication applied in the construction industry of the UK and arbitration applied in Greece was conducted in order to achieve the basic aim.

7.3 Conclusion

The critical literature review on the dispute resolutions methods applied in the Greek construction industry revealed several issues concerning the efficiency of their practice. The main characteristic of the way the construction industry settles its disputes is the different procedures, which apply on different kinds of contacts. The most unsatisfactory and less practical procedure, which has to be applied according to a relevant statute (Law 1418/84) is the one consisting from the action of “objection” and “healing request” and it refers to disputes arising only under traditional public projects. Indeed, based on the critical appraisal conducted in the earlier chapters, it seems that the actions of “objection” and “healing request” are not even perceived as dispute resolution methods, but as a mandatory pre-procedure which must be followed in order for the contractor to be able to refer the dispute, or difference to the Civil Court.

The next procedure been reviewed was the application in the Greek construction industry of arbitration. Even though arbitration is considered to be an ADR method in Greece and its main

scope under the TCG rules is speedy settlement of the difference or dispute, this fact was not evident in practice. The procedure of arbitration is surprisingly uncommon in the Greek construction industry; approximately 10 cases of arbitration were conducted by the TCG every year, a 1 in 10 proportion of the 100 cases in general which are solved under the procedure of arbitration every year. Therefore, using the deductive method, it was concluded that even the construction disputes, which are not solved by the TCG procedure, cannot be more than 100. However, a possible reason for this number might be the fact that arbitrators do not find it attractive enough as a result of the arbitration's poor remuneration proportion to the amount of claim, to settle disputes bearing in mind its consequent risks.

Impressive enough is the negative reaction of the Greek construction professionals/lawyers against the two procedures mentioned above. While construction industry seems unsatisfied due to the long time period, involved procedures of the settlement disputes through the "objection" and "healing request", when it comes to settle a dispute under an arbitral procedure, the disputants also appear to sabotage the speed of proceeding to the publication of the arbitration award. However, once again this could lead to the conclusion that construction industry scorns the contribution of the administrative procedures of "objection" and "healing request" to the dispute settlement. Therefore, by referring to the long procedure of "objection" and "healing request" construction industry is probably referring to the time that it is obligated by the law to wait before having the right to appeal to the court.

The main drawback identified in the Greek procedure of arbitration is the lack of formulation concerning the time limits and the actual procedure, which is followed. The fieldwork research revealed that even though the TCG procedure has put a time limit of 90 days for the publication of the arbitration award, this time limit is rarely followed by the disputants.

In general, the results coming from the appraisal of the efficiency of the alternative dispute resolution methods applied in the Greek construction are disappointing. The current procedures do not give the confidence to the Greek construction industry to rely on out-of court resolution processes to solve the disputes. The responsibility for that could be shared by both the construction industry itself and the Greek government, which has not proceeded with any improvements and amendments concerning the current legislation.

On the other hand, the UK construction industry has the support of the UK Government. The UK Government proceeded to several amendments in its legislation concerning the dispute resolution procedures, and this has all led to a positive influence on the UK construction industry.

Moreover, what is found impressive in the UK construction industry and the way it settles the disputes is the establishment of dispute resolution procedures from different societies and institutions practicing in the construction industry. For instance, the SCA and the ICE have produced their own rules for arbitrations, although always complying with the Arbitration Act 1996. In fact, the Arbitration Act 1996 led to remarkable improvements in the construction arbitration proceedings.

The arbitration procedure rules produced by the two institutions have a lot of positive features like the establishment of different procedures, which are practiced according to the size of claim (ICE rules) or the complexity of the dispute (SCA's CIMAR rules).

The Housing Grants, Construction and Regeneration Act 1996 is responsible for the establishment of adjudication as a mandatory first tier of dispute resolution. However, despite the considerable advantage of adjudication being an extremely speedy procedure, the number of adjudication referrals has started to decline the last two years. It seems that adjudication was initially overrated by the construction industry due to its speedy procedure and the temporary binding nature of its decision. However, this probably did not keep the industry satisfied for a long time. Moreover, the new arbitration procedures which have been introduced by the SCA and the ICE for all but the largest and complex disputes offer the same benefits as adjudication and even more; speedy and binding settlement of dispute without the need for further enforcement of the arbitration award.

To conclude, the fieldwork results make explicit the inefficiency of the dispute resolution processes applied in the Greek construction industry and the Greek practitioners deem that a transformation of the dispute resolution procedures presumed by the Greek legislation would benefit construction disputes. Thereupon, the hypothesis made at the beginning of the study is proved to be correct.

7.4 Recommendation

The study has verified the need for a transformation of the dispute resolution methods used by the Greek construction industry. Moreover, the theoretical framework of the UK procedures of arbitration and adjudication seem to be an ideal example to be followed. However, the author has further and more specific recommendations to make and some of them are also supported by the opinions expressed during the fieldwork investigation.

First of all, the Greek legislation should adopt a unified set of rules which will settle the construction disputes impartially and fairly despite the nature of the contract; private or public. However, construction projects are inherently unique and some exceptions to the rule cannot be avoided.

It is very important for the construction industry to embed that any improvement in alternative dispute resolution mechanisms with strict timescales and binding decision making which would be much more beneficial compared to settling its disputes to avoid long-battles in the courts. Therefore, the construction industry should stop relying on litigation. Alternatively, the construction industry should stimulate and work up itself the establishment of procedures tailored to its needs by following the examples of the UK construction institutes and the arbitration procedures, procedures based on the case law transformed to the industry's needs in order to gain the confidence and to firm up the support of the users. This could be easily established and approved with the use of standard form of construction contracts.

Finally, the Greek Government should always bear in mind the contribution of construction industry to the GDP. Finally, it is proposed to the Greek Government to stay focused on more practical objectives and base any transformations of the dispute resolution mechanisms, which will contribute to keeping up the productivity of the construction industry. A speedy dispute resolution method is very important in construction industry where unpaid and delayed works if paid, could keep the monies to flow in the industry. Alternatively, the speedy settlement of construction disputes/ differences will motivate the construction players. This would instantly increase the quality of construction services and consequently the construction industry.

7.5 *Research limits*

The primary limitation met throughout the conduct of this study was to find people relevant to the subject of alternative dispute resolution procedures in practice in Greece. Particularly, people within the construction industry appear to be completely unfamiliar with the procedure of arbitration, therefore it was impossible to gather any construction industry personal opinions. Moreover, as it was proved in the study, construction law stands mainly for public projects, therefore while there was more than enough literature available about dispute resolution for public projects, literature regarding private construction dispute resolution was limited. This can be proved by the lack of unified construction law and the fact that private projects follow the procedure of the C.Civ.P to settle the arising disputes.

The number of practitioners specializing in the construction law is also limited in Greece. Most of them are specialized in public bidding and private-public agreements. As far as the willingness of practitioners to share their opinions is concerned, this is discussed in the research methodology chapter.

Due to limitation of finding a satisfactory sample size of construction industry professionals/lawyers, the research was constrained to respondents who do not meet the ideal qualifications. However they were knowledgeable and very experienced people, general in dispute resolution and therefore, able to provide a broad view relevant to the subject they were asked to respond on.

Finally, the biggest challenge for conducting a study based on the construction law in two different countries was the requirement of embedding the law terms and the relative practices in two languages.

7.6 Further research

Based on the research findings and limitations of this study, the author would propose the following regarding any further research:

- Different questionnaires to be used regarding the respondents' area of knowledge.
- The design of semi-structure questionnaire and the conduct of personal interviews could probably gather more detailed information.
- The conduct of a pilot study would have been helpful in order to ensure the right structure of the questionnaire.
- Bigger research samples would lead to more statistically valid results.
- Less broad subject area to be studied. Many issues did arise from the examination of each procedure, so it would have been better for the study to focus in more detail on one dispute method.

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Appendix A The Athens International Airport-Dispute Settlement clauses

Paragraph 44.1: Resolution Board

According to this first paragraph, any issues of disagreement arising between the Greek State and the Consortium members are mandatorily referred to the amicable settlement of the dispute which is the first stage of the Dispute Resolution Procedure. Each of the parties can refer to the two-member Resolution Board, which is constituted by the Minister of National Economy (or his Designate) and the Vice Chairman of the Consortium's Board of Directors. The Resolution Board must unanimously decide within 28 days and their decision is binding for the parties. Alternatively, if the Board does not meet the 28 day deadline or its decision is not unanimous, each of the parties has the right to request to proceed to one of the other two stages of the Dispute Resolution Procedure according to Article 44 (as mentioned at the beginning of that section, Article 44 of law 2338/1995 is relevant to the Dispute Settlement for that project) as a further attempt to resolve the dispute.

The stage of amicable settlement of the dispute cannot be avoided, unless the disputes are arising out of the "shareholder's conduct before listing". These disputes may be transferred straight to the stage of arbitration without being transferred to the amicable settlement process of the Resolution Board.

Paragraph 44.2: Mediation Panel

Contrary to the first stage (the Resolution Board), Mediation Panel is not mandatory and can be unconditionally avoided. The procedure is initiated by one of the parties (i.e. Greek State or the Vice Chairman of the Consortium's Board of Directors) with a written notice, and that will be deemed to be the commencement date of the procedure. A three member panel must be constituted within 90 days from the commencement date. Each party appoints a member of the panel and their chosen mediators jointly appoint the third member who will also act as the chairman of the Mediation Panel. In case of disagreement appointing the third member, the President of the Technical Chamber of Greece is authorized to independently appoint the third member. The mediation is conducted in the English language in Athens, but the recommendation of the Mediation Panel is not binding.

The procedure before the Mediation Panel is quite flexible. This means the parties are able to change the appointed mediators from time to time, or even to quit the procedure and cancel the

constitution of the Mediation Panel by handing a notice of withdrawal to the Mediation Panel and to the other parties involved.

All deliberations in front of the Mediation Panel must be kept confidential and the subsequent proceedings i.e. arbitration or judicature must not be taken into consideration and prejudice the Mediation Panel's judgment. Also, any concessions and admissions of the parties during the mediation process must be respected and requirement of total confidentiality has to be met.

However, the parties are also free to come to an agreement by themselves with or without the contribution of the Panel even if the Mediation Panel procedure has started. They just have to bind their dispute settlement by drafting a formal settlement agreement and to have it signed by their authorized representatives. In case of a settlement initiated by the parties' themselves the Mediation Panel may be called to assist the parties in drafting the formalities of the agreement.

The dispute can be transferred to the stage of arbitration in either of the following circumstances: Firstly that the parties have not reached to a settlement as mentioned above, or secondly that the Mediation Panel's recommendation has not been accepted unanimously by the parties, or thirdly that either of the parties have terminated the procedure by quitting.

44.3 Arbitration

Arbitration is the last stage of dispute resolution and is conducted under the custody of the London Court of International Arbitration. It shall be conducted in English in London. The two parties are called to appoint one arbitrator each, who subsequently shall jointly appoint the third and presiding arbitrator. In case of disagreement the President of the London Court of International Arbitration shall appoint the presiding arbitrator of the Arbitration Court.

The Arbitration court's award is final and binding for the parties. It is not open to any further review since the parties have signed the Agreement and thereby have resigned from their right to appeal to any other court.

Appendix B The Rio-Antirio Bridge - Dispute Settlement clauses

Paragraph 28.1 Amicable Settlement

In general this paragraph affirms the right of the parties to refer to amicable settlement of their differences by themselves even when another procedure of Dispute Resolution is in progress.

Paragraph 28.2 Technical and Financial Panel Procedure/ "Adjudication Panels"

According to the second paragraph of the Article 28 mentioned above, any dispute arises out of decisions or actions of the Checker and/or the Supervision Engineer may refer to the appropriate Settlement Panel which is created for the settlement of the dispute. Two Panels can be created regarding the dispute. The Technical Panel is created to resolve technical issues relevant to the design, construction or completion of the project as well as to determine any subsequent monetary claims. The Financial Panel is created to resolve all the other issues that may occur. The dispute shall be referred to the Panel not later than 20 days from the rise of the dispute (also deemed as the effective date) based on act or document.

The party who initiates the procedure shall submit to the panel a formal reference to the dispute which contains the nature and the issues of the dispute as well as any claims and compensation. Along with the said reference, all documents upon which the pleas and claims are based must be presented.

The Adjudication Panel, Technical or Financial regarding the nature of the dispute, is constituted within a 4 month period from the Effective Date. The parties shall communicate the names of two potential members of the panel to each other. Subsequently, each party shall choose one of the two who have been proposed and he/she can be a member of the Panel within 2 months from the effective date. The two appointed members jointly appoint the third member who will be the Chairman of the Panel. In case of disagreement to do so, the third member will be appointed by the President of the International Chamber of Commerce (ICC). The members of the Panel can be replaced only under special circumstances and causes.

The Chairman has the power to define the procedure by his will. His dispute determination may be based on oral or documentary evidence. He is also likely to convene hearing or require the attendance and testimony of third persons as well as advised expert's opinion and findings. Moreover, the Panel has the authority to investigate, check, revise or confirm any of the Checker's and/or Supervision Engineer's acts and document if it deems necessary.

The Panel shall announce a decision within 28 days from the submission of the dispute's formal reference. Only in exceptional cases and if the cause is stated may the Chairman of the Panel extend the 28-days limit time. The decision must be provided in a written document mentioning the reasons which led to it as well as mentioning any opposite opinion expressed by a member of the panel.

The Adjudication Panel's decision is binding for the parties only when it is unanimous and in case of a non unanimous decision, is binding unless it is not appealed within 30 days time of the Panel's notification.

Paragraph 28.3 Arbitration

According to the Rules of Arbitration of the ICC the disputes may refer to arbitration when Adjudication Panel's settlement is unsuccessful (for the reasons mentioned in the paragraph 28.2). The arbitration is conducted in the English language in London.

The arbitral court is constituted by the same procedure mentioned in the case of "The Athens International Airport". The members of the court have the power to investigate, revise or confirm the documents issued by the Checker and/or Supervision Engineer. The arbitral court has also the power to look into the Adjudication Panel's decision.

In conclusion, the arbitration award is final and binding for the parties and since they have signed the agreement they have resigned from their right to appeal to any other court. Thereby the award is not open to review.

Appendix C The Athens Attiko Metro- Dispute Settlement clauses

Paragraph 7.3 Conciliation

The Paragraph 7.3 of the Article 7 (Law 1955/91) gives the right to each party of the Athens Metro agreement to request an attempt at conciliation for any dispute arises during the execution of the contract, even if the mandatory procedure of Administrative or Juridical dispute resolution (as seen in Articles 12 and 13 of the Law 1418/1984) is in progress. Each party who wishes to proceed in conciliation has to communicate the other party with a written notice (deemed as the Commencement Day). The conciliation takes place before a conciliator who must be jointly appointed from the parties' representatives within 15 days time from the Commencement Day. In case of a disagreement appointing a conciliator, the Chairman of the Areios Pagos (Greek Supreme Court in civil and criminal matters) shall appoint the conciliator. The procedure of conciliation takes place in Athens according to the rules of the Greek Legislation. The conciliator's opinion is stated in the minutes and is not binding for the parties.

Paragraph 7.4 Technical Expertise

According to the Paragraph 7.4 (Article 7 of the Law 1955/91), the parties agree to proceed to Technical Expertise before a three member Panel of Experts. The dispute settlement through the procedure of Technical Expertise is mandatory, when the one party initiates it with a written notice to the other party of the agreement. Each party has to designate one member of the Panel, who must in turn appoint together the third member of the Panel. If one party rejects the designation of one expert, or the third expert declines his appointment within a period of one month from the written notice, then the non-appointed members of the Panel shall be appointed from the International Centre of Technical Expertise of the ICC (International Chamber of Commerce).

The experts' valuation must be expressed according to the ICC Rules for Technical Expertise and announced to the parties within a period of time which is determined by the experts regarding the nature of the dispute. Moreover, the provisions of Article 7 (Law 1955/91) give the power to the Panel of experts to evaluate the contract's term and advice both parties for the smooth execution of the contract. Indeed, the Panel is authorized to interfere with the amendment of the contract and/or with filling contractual gaps. In case the Panel's valuation is not accepted by the parties, it is binding upon the parties until the juridical settlement of the dispute (according

to the Articles 12 and 13 of the Law 1418/1984). It should be noticed, that both client and contractor have the right for an appeal to the juridical court.

Appendix 1 Arbitration award's statement under C.Civ.P rules

The arbitration award must mention the following:

- (a) The names of the arbitrators and presiding arbitrator
- (b) The location and the time of its publication
- (c) The names of the persons who took part in the procedure of the arbitration
- (d) The arbitration agreement in which the procedure was based on
- (e) The reasons of the arbitration award
- (f) The orders of the arbitration award

Appendix 2 Issues discussed in the preliminary meeting under ICE rules

Under rule 6.4 the parties and the arbitrator shall discuss and decide whether and to what extent they do the following:

- (a) Short procedure, expedited procedure, or special procedure for experts of these rules shall apply
- (b) Progress may be facilitated and costs saved by determining some of the issues in advance of the main hearing
- (c) Evidence of Experts may be necessary or desirable
- (d) There should be a limit put on recoverable costs, and
- (e) Where the Act applies to the Arbitration, the parties should enter into an agreement (if they have not already done so) excluding the right to appeal in accordance with the ss32,45 and 69 of the Act.

Appendix 3 Content of the Statement of Case for the short and expedited procedure under ICE rules

The claiming party shall prepare and serve to the other party and the arbitrator a file which contains the following:

- (a) A statement as to the orders or awards he seeks;
- (b) A statement of his reasons for being entitled to such orders or awards;
- (c) Copies of any documents on which he relies (including statements, identifying the origin and date of each document

Appendix 4 Content of file submitted to experts for the special procedure of experts under ICE rules

The file which the parties must prepare for the special procedure for Experts shall contain:

- (a) A statement of the factual findings he seeks
- (b) A report or statement from and signed by each Expert upon whom that party relies
- (c) And copies of any other documents referred to in each Experts report or statement or on which the party relies, identifying the origin and date of each document

Appendix 5 Content of the Adjudication Notice

The Adjudication Notice shall set out the following:

- (a) The nature and a brief description of the dispute and of the parties involved
- (b) Details of where and when the dispute has arisen
- (c) The nature of the redress which is sought
- (d) The names and the addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).

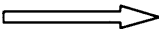
Appendix 6 Questionnaire

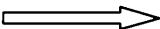
PART A

Question 1. The construction disputes in Greece are settled through different procedures as presumed by the Greek legislation. For instance, the disputes arising under traditional public contracts are mandatory settled according to the provisions for dispute resolution of the Law 1418/84. On the contrary, the disputes arising under BOT projects can be settled according to the provisions of the Law 2052/92, or the provisions for dispute resolution of the special ratified laws for each project. As far as the private disputes in construction industry are concerned, the parties have the right to refer their dispute to arbitration. In that event, arbitration can be conducted either under the Technical Chamber of Greece (only for technical disputes), or under the general arbitration rules of the C.Civ.P.

In your perception, would it be better if the Greek legislation adopted a more unified dispute resolution system for settling construction disputes the same way in all kind of contracts, or at least adopted a unified system excluding from its provisions some projects and/or contracts with specific characteristics?

Question 2. The out of court dispute resolution mechanisms for disputes arise under traditional public contracts (according to the provisions of the Law 1418/84) are:

“Objection”  Time limit for the announcement of the decision: 2 months

“Healing request”  Time limit for the announcement of the decision: 3 months

Both procedures are mandatory for the contractor, in order to reserve his right to refer the dispute to the civil court. The omission of the appropriate public authority to announce its decision is considered as a negative answer to the contractor’s claim.

The usual outcome of the above mandatory and bureaucratic procedures is the announcement of out-of time decisions against the contractor’s “objection” and/or “healing request” or the omission of the proper authority to publish a decision against the contractor’s “objection”. Both outcomes are considered as negative decisions but in the meanwhile valued time has been wasted, while the dispute finally ends up to be a long-battle in the court.

Do you have any recommendations for the improvement of the above administrative procedures? In the event of not replacing these procedures, how could they be more effective?

PART B

Question 3. Both ICE Arbitration rules (of Institute of Civil Engineers) and Adjudication rules can apply in international agreements as long as the construction works take place within the UK. In Greece, the international agreements for domestic projects use the rules of International Arbitration according to Law 2735/1999.

Do you think the existence of Arbitration rules which can apply in both domestic and international agreements would be more practical and beneficial for the users of arbitration procedure?

Question 4. The arbitration Act in the UK and therefore the ICE and CIMAR rules for arbitration anticipate the appointment of a sole arbitrator to solve the dispute. On the contrary, the provisions of the C.Civ.P for arbitration (if not stipulated otherwise in the arbitration agreement) anticipates the constitution of a three-member tribunal.

Is it better in your perception the conduction of arbitration by three arbitrators? If yes, why is that?

PART C

Question 5. The Institute of Civil Engineers has established three different procedures which are applied proportionate to the amount of claim. Thereafter the length of arbitration fluctuates between 42 and 100 days. On the other hand the provisions of C.Civ.P in Greece do not set time periods for the conduction of arbitration (the 90-days procedure of TCG is an exception) and as a result arbitration is not preferred by the construction industry.

Do you think the establishment of a more flexible procedure (like ICE arbitration procedure and CIMAR rules) could contribute to the increase of Greek construction disputes which refer to arbitration?

Question 6. The Housing Grants, Construction and Regeneration Act 1996 has established the alternative dispute resolution method of adjudication mandatory for the construction disputes. The adjudication procedure is more suitable to small size of claims (the first years of its application a claim of £300,000 considered to be a big legal case)¹. Moreover, the dispute settlement with the use of adjudication is very common in the UK construction industry due to its speedy procedure; in 2005 approximately 2,500 construction cases referred to adjudication.

- (ii) Do you think the alternative dispute resolution procedures are common in the Greek construction industry?
- (iii) Could a speedy and effective procedure like adjudication contribute to the increase of alternative dispute resolution methods in the Greek construction industry? How would the construction industry react to the establishment of a procedure relative to adjudication in your opinion?

Question 7

- (iii) What is your opinion for the UK system regarding the alternative resolution of disputes arising in the construction industry?
- (iv) Given the Greek factuality, do you reckon that the Greek legislation could adopt some of the features of the UK system concerning the construction disputes and their settlement? If yes, which procedure (between adjudication and arbitration) you consider to be the more suitable to the Greek construction industry and its needs?

Appendix 7 Sample List- Arbitration & Adjudication summary

Sample List:

Charalampos Adamoudis-lawyer: His practice areas are law of contracts and commercial law.
(Contact Details: +30 2310 502888, adamoudis@hotmail.com)

Thanasis Liaramantzis-engineer: His practice area is Rural & Surveying Engineering/Topography. He is occupied in the Arbitration administrative office of the Technical Chamber of Greece (Contact Details: +30 2410 257 866, tee_lar@tee.gr)

Nasos Nikolopoulos-lawyer: His practice areas are, Corporate, Commercial, Labour, Tax Law and Public Contracting. He is also a partner of the independent Non-Profitable Organization, Hellenic Arbitration Initiative (H.A.I.). (Contact Details: +30 6973 352698, info@hai-arbitration.gr)

Research Summary

The summary of adjudication and arbitration below was attached along with the interview-questionnaire to the participants of the research.

Ο Θεσμός της Διαιτησίας στη Μεγάλη Βρετανία

Ο Θεσμός της Διαιτησίας στη Μ.Βρετανία ορίζεται από τους κανονισμούς της νομοθετικής πράξης Arbitration Act 1996. Η νομοθετική αυτή πράξη αποτελεί μεταρρύθμιση των παλαιότερων Πράξεων 1950, 1975, 1979. Σύμφωνα με τις διατάξεις του Arbitration Act 1996, καθιερώνονται οι βασικές αρχές για μια αμερόληπτη Διαιτητική διαδικασία με λιγότερες ανωφελείς χρονικές καθυστερήσεις και έξοδα.

Το 1998, η κοινότητα των Διαιτητών για κατασκευαστικά θέματα (Society of Construction Arbitrators) σύνταξε και δημοσίευσε τους δικούς της κανόνες Διαιτησίας όσον αφορά την επίλυση διαφορών στον κατασκευαστικό τομέα, τους λεγόμενους "The Construction Industry Model Arbitration Rules" (CIMAR) οι οποίοι υπακούουν στους κύριους κανονισμούς της νομοθετικής πράξης Arbitration Act 1996. Πολύ γρήγορα οι κανόνες αυτοί συμπεριλήφθηκαν στους όρους επίλυσης διαφορών των JCT συμβολαίων. (Η JCT -Joint Contracts Tribunal- παράγει πρότυπα συμβολαίων για χρήση στον κατασκευαστικό τομέα)

Τους δικούς της κανόνες Διαιτητικής διαδικασίας σύνταξε και το Ινστιτούτο Πολιτικών Μηχανικών (Institute of Civil Engineers-ICE). Η συγκεκριμένη διαδικασία υπάγεται σε όλες τις διαφορές που προήλθαν από συμβάσεις οι οποίες συντάχθηκαν σύμφωνα με τους όρους του ICE. Παρόλο που η Διαιτητική διαδικασία του ICE έχει συνταχθεί σύμφωνα με τις διατάξεις του Arbitration Act 1996 (αποφυγή χρονικών καθυστερήσεων και εξόδων) , μπορεί να διεξαχθεί και ανεξάρτητα από αυτή , δηλαδή είναι κατάλληλη ακόμα και για συμβάσεις όπου το ένα ή και τα δύο συμβαλλόμενα μέρη προέρχονται εκτός χώρας αλλά το αντικείμενο της σύμβασης λαμβάνει χώρα εντός Μ. Βρετανίας.

ICE Rules

Σκοπός της τελευταίας έκδοσης Διαιτητικών κανονισμών του ICE είναι να συνδυάσει την ταχύτητα της διαδικασίας του “ adjudication” με τη νομικά δεσμευτική φύση της Διαιτητικής απόφασης για κάθε μεγέθους διαφοράς. Έτσι καθιέρωσε τρεις διαφορετικές διαδικασίες εξαρτώμενες από το χρηματικό ύψος διεκδίκησης μεταξύ των αντιδίκων.

Η σύντομη διαδικασία προτείνεται για διαφορές ύψους μικρότερες από 50,000 στερλίνες (~ 62,500 ευρώ) και μπορεί να διεξαχθεί είτε με γραπτή ακρόαση μόνο είτε με γραπτή και προφορική/επιθεώρηση της τοποθεσίας όπου προέκυψε η διαφορά. Ο χρόνος έκδοσης της Διαιτητικής απόφασης είναι 42 και 56 μέρες από τη μέρα κατάθεσης του αντικειμένου της διαφοράς αντίστοιχα.

Η δεύτερη προτεινόμενη διαδικασία είναι κατάλληλη για διαφορές ύψους 50,000-250,000 στερλίνες (~ 62,500-312,500 ευρώ) και μπορεί να διεξαχθεί με κανονική ακρόαση ή όχι και η Διαιτητική απόφαση πρέπει να εκδοθεί μέσα σε διάστημα 100 ημερών από την κατάθεση της διαφοράς στον Διαιτητή.

Η τρίτη διαδικασία απαιτεί την κατάθεση αποδεικτικών στοιχείων από πραγματογνώμονες και προτείνεται για διαφορές ύψους πάνω από 250,000 στερλίνες (~312,500 ευρώ). Οι κανονισμοί του ICE δεν ορίζουν χρονικά όρια για την έκδοση απόφασης από μέρους του Διαιτητή.

CIMAR Rules

Η κοινότητα των Διαιτητών για κατασκευαστικά θέματα προβλέπει τρεις διαφορετικές διαδικασίες και διεξάγεται αυτή που θεωρείται πιο κατάλληλη για τη φύση της διαφοράς. Η πρώτη περιλαμβάνει ακρόαση μιας ημέρας και έκδοση της απόφασης μέσα σε διάστημα ενός μήνα από το τέλος της ακρόασης. Η δεύτερη διεξάγεται με ανταλλαγή γραπτών καταθέσεων μεταξύ των αντιδίκων και του Διαιτητή με την απόφαση να εκδίδεται ένα μήνα μετά την παράδοση της τελευταίας κατάθεσης. Τέλος, όταν καμία από τις παραπάνω διαδικασίες δεν κρίνεται κατάλληλη για την επίλυση της διαφοράς, αυτή επιλύεται με την εφαρμογή πιο σύνθετης διαδικασίας.

Η διαδικασία του adjudication στη Μ. Βρετανία

Η Βρετανική κυβέρνηση έδειξε ιδιαίτερο ενδιαφέρον στον κατασκευαστικό τομέα και στα προβλήματα αντιπαραγωγικότητας που παρουσίαζε κατά καιρούς. Για το λόγο αυτό θέλοντας να εντοπίσει την πηγή του προβλήματος ανέθεσε το 1994 στον Sir Latham να συντάξει μια κριτική ανασκόπηση του κατασκευαστικού κλάδου. Στην έκθεσή του ο Sir Latham μεταξύ άλλων πρότεινε σαν επίσημη διαφορά επίλυσης διαφορών το “adjudication” (κάποιες από τις πιθανές μεταφράσεις της λέξης θα ήταν: επιδίκαση, απόφαση, κατακύρωση, κρίση. Παρόλα αυτά δεν διατίθεται η ακριβής μετάφραση στα ελληνικά για τη συγκεκριμένη εξωδικαστική διαδικασία. Η περιγραφή της διαδικασίας παρατίθεται στη συνέχεια). Η απάντηση της Βρετανικής κυβέρνησης στη αναφορά του Sir Latham ήρθε με τη νομική επικύρωση του “adjudication” ως υποχρεωτικό τρόπο επίλυσης διαφορών, βάση του κατασκευαστικού νόμου “Housing Grants, Construction and Regeneration Act 1996” (HGCRA). Επιπλέον, για να εξασφαλίσει την εφαρμογή του adjudication ακόμα στις περιπτώσεις που δεν συμπεριλαμβάνεται στους όρους του συμβολαίου, ένας δευτερεύον νόμος έρχεται σε εφαρμογή (“the Scheme of the Construction Contracts”).

Η διαδικασία του “adjudication” αρχίζει ύστερα από αίτηση ενός από τα συμβαλλόμενα μέρη προς τον αντίδικό του. Μέσα σε διάστημα 7 ημερών πρέπει να οριστεί ο “adjudicator” ο οποίος εξετάζει τη διαφορά και εκδίδει τη απόφασή του σε διάστημα 28-42 ημερών από την αίτηση για “adjudication”. Ο “adjudicator” αφού έχει συλλέξει τα απαραίτητα έγγραφα με τους ισχυρισμούς των αντιδίκων έχει το δικαίωμα μεταξύ άλλων να απαιτήσει επιπλέον έγγραφες αποδείξεις, να επισκεφτεί την τοποθεσία-έργο στη οποία έχει προκύψει η διαφορά, ανακρίνει τα αντίδικα μέρη ή τυχών μάρτυρες ακόμη και να ζητήσει την εξέταση πραγματογνώμονα. Τέλος, Η απόφαση του “adjudicator” είναι δεσμευτική και για τα δύο μέρη μέχρι να ακυρωθεί από διαιτητική ή δικαστική απόφαση.

Appendix 8 Charalampos Adamoudis-Written transcript

Answer to Question1 Σε κάθε περίπτωση, όταν για διαφορές που προκύπτουν από παρόμοιου τύπου συμβάσεις (όπως σε ότι αφορά αυτές στον κατασκευαστικό τομέα) υπάρχει διάκριση και διαφορετική νομική αντιμετώπιση των εκάστοτε ζητημάτων αναλόγως με το ποιος είναι διάδικο μέρος, δημιουργείται ένα περιβάλλον ανομοιομορφίας και αμφισβήτησης του γενικότερου συστήματος απονομής δικαιοσύνης. Κι αυτό προκύπτει πολύ συχνά λόγω της κατά κανόνα προνομιακής μεταχείρισης των κρατικών φορέων έναντι ιδιωτών.

Το ιδανικότερο και -κατά κάποιον τρόπο- νομικά ορθότερον, θα ήταν η από μέρους του Έλληνα νομοθέτη κωδικοποίηση των θεμελιωδών διατάξεων που αφορούν αυτού του τύπου τις διαφορές και η δημιουργία ενός, κατά το δυνατόν, ενοποιημένου συστήματος επίλυσης των ζητημάτων που προκύπτουν, έστω και κατά τον πρώτο βαθμό επίλυσης διαφορών (εξωδικαστικής ή διαιτητικής), ταυτόχρονα όμως με την παράλληλη θέσπιση ειδικών κανόνων που θα ρυθμίζουν ιδιαίτερες περιπτώσεις συμβάσεων και εξαιρετικά εξειδικευμένων όρων που πολλές φορές τίθενται σε συμβάσεις κατασκευών έργων. Κάτι ανάλογο συμβαίνει και σε άλλους τομείς της επιστήμης του δικαίου, όπως για παράδειγμα στο Ποινικό Δίκαιο όπου υπάρχει ο Ποινικός Κώδικας με τις γενικά δεσμευτικές ρυθμίσεις κανόνων δικαίου και παράλληλα οι λεγόμενοι Ειδικοί Ποινικοί Νόμοι που αφορούν εξειδικευμένες περιπτώσεις. (Σίγουρα είναι κάτι πολύ διαφορετικό από τον τομέα που μας απασχολεί εν προκειμένω, αλλά δίνεται, απλοϊκά ίσως, ως παράδειγμα για να γίνει κατανοητή η δυνατότητα παρόμοιας πρόβλεψης και στον κατασκευαστικό τομέα).

Answer to Question 2. Διαχρονικά αποτελούσε σοβαρό πρόβλημα στην Ελλάδα η έλλειψη ουσιαστικής προάσπισης των συμφερόντων των πολιτών κατά τη συνήθη περίπτωση που ασκούν νομικής φύσης δικαιώματα και στρέφονται κατά κάποιου δημόσιου φορέα. Είναι δε συχνή η καθυστέρηση ή ακόμη και αποφυγή έκδοσης απόφασης, πολλές φορές μάλιστα και χωρίς καμία αιτιολόγηση από μέρους του κρατικού φορέα που έχει επιφορτιστεί με την αρμοδιότητα απόφασης επί τέτοιων ζητημάτων (π.χ. Δήμοι, Περιφέρειες κλπ.), γεγονός που αν μη τι άλλο γεννά καχυποψία και αποτελεί ένδειξη μεροληπτικής διάθεσης υπέρ των δημοσίων αρχών. Η αλήθεια ωστόσο είναι ότι τα τελευταία χρόνια παρατηρείται μια βελτίωση στο προπεριγραφόμενο πρόβλημα μέσα από έναν μηχανισμό ελέγχου της αυτονόητης τήρησης των προθεσμιών που θέτει ο νόμος. Συνεπώς, θα μπορούσε να πει κανείς ότι νόμοι υπάρχουν και θα μπορούσαν να καλύψουν ικανοποιητικά το πεδίο των δημοσίων συμβάσεων, αλλά το πρόβλημα είναι η αποτελεσματική και αυστηρή εφαρμογή τους και βεβαίως η ταχύτερη εκδίκαση των υποθέσεων και η σύντμηση των προθεσμιών έκδοσης αποφάσεων.

Ωστόσο, κατά την γνώμη μου, θα μπορούσε για την οικονομία του χρόνου να ακολουθηθεί και σε αυτές τις διαφορές διαδικασία παρόμοια με αυτή του άρθρου 214 Α του Κ.Πολ.Δ, δηλαδή η άσκηση ενδίκων βοηθημάτων και μέσων αλλά ταυτόχρονα με την υποχρεωτική προσπάθεια εξωδικαστικής-συμβιβαστικής επίλυσης της διαφοράς και κατόπιν σχεδόν άμεση διαπίστωση της αποτυχίας ή επιτυχίας συμβιβασμού προκειμένου να συνεχίζεται ή όχι η επίδικη διαφορά, ώστε να μην χάνεται επιπλέον χρόνος μέχρι την απονομή δικαιοσύνης.

Answer to Qestion 3. Αναμφίβολα, η θέσπιση ομοιόμορφων διεθνών κανόνων δικαίου, εν προκειμένω διεθνών διαιτητικών κανόνων, ενισχύει αφενός την λειτουργικότητα του συνολικού θεσμού της Διεθνούς και Εθνικής διαιτησίας αφού πλέον θα αποτελούν μέρος ενός εναρμονισμένου δικαίου με διαπολιτειακά αναγνωρισμένους κανόνες κι αφετέρου θα μειώνει την πιθανότητα του επιχειρηματικού ρίσκου αφού πέρα από τους διαιτητές που θα γνωρίζουν τους διεθνούς ισχύος κανόνες, και τα ίδια τα συμβαλλόμενα μέρη γνωρίζοντας πλέον τους διεθνώς αναγνωρισμένους κανόνες διαιτησίας θα αναλαμβάνουν με περισσότερη ευθύνη (αφού θα γνωρίζουν εκ των προτέρων τους γενικούς όρους των συμβάσεων αλλά τις κυρώσεις σε περίπτωση πλημμελούς εκπλήρωσης της εκάστοτε σύμβασης) αλλά και περισσότερη ασφάλεια. Είναι λοιπόν δεδομένο ότι η καθιέρωση εναρμονισμένων κανόνων ιδιωτικού διεθνούς δικαίου στη διαιτησία θα ενισχύσει τη λειτουργικότητα του θεσμού και το γενικότερο πνεύμα ασφάλειας των συναλλαγών. Από την άλλη δε, δεν θα πρέπει να παραβλέπεται η ιδιαιτερότητα των συνθηκών, των συναλλακτικών ηθών και του εθιμικού δικαίου που εμφανίζει κάθε πολιτεία ξεχωριστά, κάτι που αποτελεί τροχοπέδη στην πλήρη θέσπιση ομοιόμορφων κανόνων διαιτησίας και στην εσωτερική έννομη τάξη. Παρόλα αυτά, ο θεσμός της διεθνούς διαιτησίας ενισχύεται διαρκώς και οδηγεί τα κράτη σε υπογραφές και επικυρώσεις διεθνών συμβάσεων με απώτερο σκοπό την εναρμόνιση των δικαίων με την εισαγωγή κοινών κανόνων στο εσωτερικό τους δίκαιο.

Answer to Question 4. Κατά την προσωπική μου άποψη, εφόσον τα μέρη δεν έχουν επιλέξει από πριν έναν διαιτητή κοινής εμπιστοσύνης, είναι καλύτερο να επιλαμβάνονται της επίδικης υπόθεσης περισσότεροι από έναν διαιτητές. Αυτό διότι, ελαχιστοποιείται η όποια πιθανότητα επηρεασμού της δικαστικής κρίσης (έστω και ως υποψίας), ενισχύεται και εμπλουτίζεται η νομική επιχειρηματολογία που προηγείται της απόφασης και εν τέλει επιτυγχάνεται μια πληρέστερη νομικά κρίση- απόφαση επί της εκάστοτε επίδικης διαφοράς. Είναι σαφές ότι είναι πιθανότερο οι τρεις δικαστές-διαιτητές να αποφαινούνται με μεγαλύτερη δικαιοσύνη αφού μεταφέρουν τις γνώσεις, την εμπειρία και την επιστημονική κατάρτιση σε μεγαλύτερο βαθμό από τον έναν δικαστή ο οποίος συγκεντρώνει τη συγκεκριμένη “υπερεξουσία”

Answer to Question 5. Δυστυχώς, κατά τη δικαστική πρακτική στην Ελλάδα, παρατηρεί κανείς τεράστια προβλήματα που σχετίζονται με την καθυστέρηση απονομής δικαιοσύνης, λόγω ακριβώς αυτής της έλλειψης αυστηρών προθεσμιών για την περαίωση των επίδικων υποθέσεων, με το οποιοδήποτε αποτέλεσμα έχουν αυτές. Είναι λοιπόν αυτονόητο και δεδομένο ότι εφόσον καθιερωθεί μια πιο ευέλικτη διαδικασία αντίστοιχη με της Αγγλίας, η διαιτησία θα επιλέγεται σε πολύ μεγαλύτερο βαθμό από τους ενδιαφερόμενους προκειμένου να επιλύσουν τις όποιες διαφορές προκύπτουν από τις σχετικές συμβάσεις.

Answer to Question 6(i) Θα έλεγα ότι στην Ελλάδα συμβαίνει αυτό σε πολύ μικρό βαθμό. Αντίθετα, υπάρχει το πολύ συχνό φαινόμενο στρεψοδικίας και παρελκυστικής τακτικής (δηλαδή πρακτική αναβολής και καθυστέρησης εκδίκασης της υπόθεσης με διάφορα νομικά τεχνάσματα, αποφυγής υπαγωγής σε δικαστική κρίση) . Γί' αυτό το λόγο άλλωστε και δεν είναι διαδεδομένη αυτής της μορφής επίλυση των διαφορών από τις κατασκευαστικές συμβάσεις. Ιδιαίτερα δε στις περιπτώσεις όπου στη μια πλευρά των συμβαλλομένων βρίσκεται κρατική αρχή, είναι περίπου δεδομένη η απρόσφορη και άνευ νοήματος προσπάθεια οποιασδήποτε εναλλακτικής επίλυσης της διαφοράς μέσω εξωδικαστικής επίλυσης, καθώς συνήθως η κατάσταση εκκρεμοδικίας διατηρείται για πολλά έτη μέχρι την τελική κρίση από τα ανώτατα δικαστήρια του κράτους (Άρειος Πάγος, ΣτΕ).

Answer to Question 6(ii) Θεωρώ ότι μια αντίστοιχη διαδικασία με αυτή του "adjucation" θα μπορούσε να αλλάξει άρδην τα δεδομένα στο σύνολο του κατασκευαστικού τομέα και των διαφορών που προκύπτουν από τις σχετικές συμβάσεις τους. Πρώτον, διότι προσφέρει ευελιξία και ταχύτητα στην εκδίκαση και κρίση της υπόθεσης και δεύτερον διότι διαθέτει άμεσα δεσμευτική κρίση έναντι των διαδίκων μερών, δηλαδή καθίσταται προσωρινά εκτελεστή (κατά τη νομική ορολογία). Συγκεκριμένα, η ταχύτητα απονομής δικαιοσύνης με άμεσα δεσμευτική κρίση (έστω και προσωρινώς εκτελεστή) δημιουργεί αφενός μεγαλύτερο αίσθημα δικαίου, ενισχύει την ασφάλεια των συναλλαγών κι αφετέρου ωθεί και "εξαναγκάζει", κατά κάποιον τρόπο, τα μέρη να ακολουθήσουν επιμελέστερη πρακτική και αμοιβαία τήρηση των όρων των συμβάσεων, αποτρέποντάς τους από την πλημμελή εκπλήρωσή τους. Επιπλέον, ο κατασκευαστικός κλάδος θα επικροτούσε την υιοθέτηση τέτοιας πρακτικής ("adjudication"), καθώς θα οδηγούσε εμμέσως σε βελτιστοποίηση της ποιότητας εργασίας τους, για τις αιτίες που αναλύθηκαν παραπάνω, και συνεπώς θα ενίσχυε το κύρος του συγκεκριμένου κλάδου.

Answer to Question 7(i) Αυτά που εύκολα θα μπορούσε να ξεχωρίσει κανείς ως θετικά στοιχεία του Βρετανικού δικαιοϋκού συστήματος σε ότι αφορά τον κατασκευαστικό τομέα είναι, πρώτον η κατά βάση σημαντική ταχύτητα με την οποία εκδικάζονται οι υπό κρίση υποθέσεις και που τελικά αποφαινεται κάθε δικαστήριο ή άλλος εξωδικαστικός θεσμός και δεύτερον η

άμεσα δεσμευτική ισχύς με την οποία καλύπτεται η εκάστοτε σχετική δικαστική κρίση. Σαφώς ο θεσμός που κατά την άποψή μου ξεχωρίζει για την ευελιξία και την ταχύτητά της είναι το "adjudication" (άλλωστε και μόνο τα νούμερα των υποθέσεων που επιλαμβάνεται αποδεικνύει την επιτυχία του θεσμού). Ωστόσο, η μόνη κριτική μου παρατήρηση είναι (κάτι που προανεφέρθη και σε προηγούμενη απάντησή μου) είναι ότι αυτή η συγκέντρωση σημαντικής εξουσίας αλλά και φόρτου εργασίας σε έναν δικαστή ή επιδιαιτητή μόνο, πιθανώς θα μπορούσε να γεννήσει αμφιβολίες για την καθαρότητα της κρίσης του εκάστοτε διαιτητή. Ίσως λοιπόν να ήταν νομικά πληρέστερο να χρησιμοποιούνται περισσότεροι του ενός δικαστές τουλάχιστο σε κάποιες περίπλοκες περιπτώσεις.

Answer to Question 7(ii) Πραγματικά θα ήταν χρήσιμο, η ελληνική έννομη τάξη να υιοθετήσει ορισμένα πολύ θετικά χαρακτηριστικά του αντίστοιχου και περισσότερο ευέλικτου Βρετανικού συστήματος για τις διαφορές που προκύπτουν στον κατασκευαστικό τομέα. Κυρίως δε σε ότι έχει να κάνει με την αυστηρή τήρηση των ταχύτατων προθεσμιών που τίθενται τόσο για την αρχική συζήτηση όσο και την τελική κρίση του δικαστηρίου όσο και την άμεσα δεσμευτική νομική ισχύ των κρίσεων της ώστε να μην μείνει κανένα νομικό ή πραγματικό κενό μέχρι την (πιθανή) συνέχιση της διαφοράς σε δεύτερο βαθμό δικαιοδοσίας των δικαστηρίων. Πιστεύω, καταρχάς, ότι το ιδανικότερο σύστημα που θα μπορούσε να καθιερωθεί στην Ελλάδα θα ήταν το "adjudication", ωστόσο, διατηρώ τις επιφυλάξεις μου για το εάν θα ήταν και το πλέον εύκολα εφαρμόσιμο, αφού για να πετύχει θα πρέπει παράλληλα να δημιουργηθεί ένας κατάλληλος μηχανισμός ελέγχου τήρησης των δικαστικών κρίσεων, αφού δυστυχώς κυρίως από την πλευρά των κρατικών αρχών παρατηρείται διαχρονικά μια προσπάθεια μη συμμόρφωσης σε δικαστικές αποφάσεις. Το μόνο δε θετικό είναι ότι τα τελευταία χρόνια με την ενίσχυση ευρωπαϊκών θεσμών (κέντρων ελέγχου ή διεύρυνσης της ισχύος των ευρωπαϊκών δικαστηρίων, π.χ. το Ε.Δ.Δ.Α –Ευρωπ.Δικαστήριο Δικαιωμάτων του Ανθρώπου), αρχίζει κάτι να αλλάζει σε αυτή την πρακτική.

Appendix 9 Thanasis Liaramantzas- Interview transcript

Answer to Question 1: Θα έπρεπε να υπάρχει ένα ενοποιημένο σύστημα.

Answer to Question 2: Εκτός αντικειμένου

Answer to Question 3: Οι κανονισμοί του ΤΕΕ εφαρμόζονται και για διεθνής συμβάσεις με τη διαφορά ότι υιοθετούνται κάποια απο τα άρθρα της Διεθνής Διαιτησίας.

Answer to Question 4: Ασφαλώς κι εξυπηρετεί η διεξαγωγή απο 3 Διαιτητές. Δεν υπάρχει αντιδικία και η απόφαση είναι πιο δίκαιη ειδικά αν είναι ομόφωνη. Στην πράξη οι διαιτητές είναι συνήγοροι των πλευρών που τους όρισαν. Ο ορισμός των διατητών θα έπρεπε να ανατεθεί σε ένα ανεξάρτητο σώμα.

Answer to Question 5: Δεν έχει εκδοθεί ποτέ απόφαση σε 90 ημέρες. Για την ακρίβεια δεν έχει εκδοθεί ούτε σε 190 ημέρες. Τα διάδικα μέρη σαμποτάρουν τα ίδια τη διαδικασία γι α2 κυρίους λόγους. 1) αφήνουν ανοιχτό το ενδεχόμενο μιας εκκρεμής διεκδίκησης για να παρουσιάσουν μεγαλύτερη ρευστοτητα στις συνεργασίες. 2) για να συγκεντρώσουν περισσότερα στοιχεία υπέρ τους. Πιστεύω οτι το ICE έχει ένα πολύ καλά ταξινομημένο σύστημα.

Answer to Question 6: Οι υποθέσεις που αναφέρονται στην Ελλάδα στη διαιτησία είναι πολύ λίγες. Το Πρωτοδικείο εκδίδει 100 αποφάσεις διαιτησίας το χρόνο για κάθε περιέχομενο. Η διαιτησία δεν είναι ιδιαιτεμένη λόγω των μισθών των διαιτητών. Θεωρούν οτι είναι μεγάλη ευθύνη να αναλάβουν μια υπόθεση 1000 ευρώ και να φέρουν το ρίσκο της αντιδικίας.

Answer to Question 7: Το Βρετανικό σύστημα δείχνει να φέρει πολλά θετικά στοιχεία και μια μετατροπή του ελληνικού συστήματος θα μπορούσε να γίνει και με την πρωτοβουλία του ΤΕΕ. Ενα κομμάτι του ICE θα μπορο'θσε να συζητηθεί αναμφίβολα.

Appendix 10 Nasos Nikolopoulos – Written transcript

Answer to Question 1: ΔΕΔΟΜΕΝΑ Η ΠΟΛΥΝΟΜΙΑ ΚΑΙ Η ΥΠΑΡΞΗ ΠΟΛΛΩΝ ΔΙΑΔΙΚΑΣΙΩΝ, ΑΡΜΟΔΙΟΤΗΤΩΝ ΚΑΙ ΔΙΚΑΙΟΔΟΣΙΩΝ ΓΙΑ ΤΗΝ ΕΠΙΛΥΣΗ ΔΙΑΦΟΡΩΝ ΠΟΥ ΑΝΑΚΥΠΤΟΥΝ ΑΠΟ ΤΗΝ ΕΚΤΕΛΕΣΗ ΔΗΜΟΣΙΩΝ ΕΡΓΩΝ, ΠΡΟΚΑΛΕΙ ΑΝΑΣΦΑΛΕΙΑ ΔΙΚΑΙΟΥ, ΓΡΑΦΕΙΟΚΡΑΤΙΑ ΚΑΙ ΣΥΝΘΗΚΕΣ ΠΙΘΑΝΗΣ ΑΔΙΑΦΑΝΕΙΑΣ. ΔΕΔΟΜΕΝΑ Η ΔΗΜΙΟΥΡΓΙΑ ΟΜΟΙΟΜΟΡΦΟΥ ΣΥΣΤΗΜΑΤΟΣ, ΜΕ ΚΟΙΝΟΥΣ ΚΑΝΟΝΕΣ ΚΑΙ ΔΙΑΔΙΚΑΣΙΑ ΘΑ ΟΔΗΓΗΣΕΙ ΣΕ ΕΠΙΤΑΧΥΝΣΗ ΤΗΝ ΠΟΡΕΙΑΣ ΕΠΙΛΥΣΗΣ ΚΑΙ ΔΗΜΙΟΥΡΓΙΑ ΑΣΦΑΛΕΙΑΣ ΚΑΙ ΣΤΑΘΕΡΟΤΗΤΑΣ ΔΙΚΑΙΟΥ.

Answer to Question 2: ΘΑ ΠΡΕΠΕΙ ΚΑΤΑ ΤΑ ΑΝΩΤΕΡΩ ΝΑ ΕΝΟΠΟΙΗΘΟΥΝ ΣΕ ΟΜΟΙΟΜΟΡΦΟ ΠΛΑΙΣΙΟ ΟΙ ΔΙΑΔΙΚΑΣΙΕΣ ΕΠΙΛΥΣΗΣ, ΝΑ ΚΑΤΑΣΤΟΥΝ ΚΟΙΝΕΣ ΚΙ ΕΥΛΟΓΕΣ ΟΙ ΠΡΟΘΕΣΜΙΕΣ, ΚΥΡΙΩΣ ΝΑ ΚΑΤΑΤΜΗΘΟΥΝ ΑΥΤΕΣ ΓΙΑ ΤΗΝ ΕΚΔΟΣΗ ΑΠΟΦΑΣΕΩΝ ΑΠΟ ΤΟΥΣ ΦΟΡΕΙΣ ΤΟΥ ΔΗΜΟΣΙΟΥ ΚΑΙ ΝΑ ΕΠΙΜΗΚΥΝΘΟΥΝ ΕΥΛΟΓΩΣ ΑΥΤΕΣ ΓΙΑ ΤΗΝ ΑΣΚΗΣΗ ΕΝΔΙΚΩΝ ΜΕΣΩΝ.

Answer to Question 3: ΠΙΘΑΝΩΣ ΝΑ ΗΤΑΝ. ΠΛΗΝ ΟΜΩΣ Η ΔΙΑΦΟΡΟΠΟΙΗΣΗ ΜΕΤΑΞΥ ΕΓΧΩΡΙΩΝ ΚΑΙ ΔΙΕΘΝΩΝ ΚΑΝΟΝΩΝ ΙΣΧΥΕΙ ΣΤΗΝ ΠΛΕΙΟΝΟΤΗΤΑ ΤΩΝ ΚΛΑΔΩΝ ΔΙΚΑΙΟΥ. ΓΟΝΙΜΗ ΘΑ ΗΤΑΝ, ΠΑΝΤΩΣ, Η ΠΡΟΣΑΡΜΟΓΗ ΤΩΝ ΕΓΧΩΡΙΩΝ ΔΙΑΔΙΚΑΣΙΩΝ ΣΤΗΝ ΤΥΧΟΝ ΔΙΕΘΝΗ, ΘΕΤΙΚΗ ΕΜΠΕΙΡΙΑ.

Answer to Question 4: Ο ΑΡΙΘΜΟΣ ΤΩΝ ΔΙΑΙΤΗΤΩΝ ΘΑ ΠΡΕΠΕΙ ΝΑ ΕΙΝΑΙ ΑΝΑΛΟΓΟΣ ΤΟΥ ΥΨΟΥΣ, ΤΗΣ ΠΟΛΥΠΛΟΚΟΤΗΤΑΣ ΚΑΙ ΤΗΣ ΣΗΜΑΣΙΑΣ ΤΗΣ ΕΠΙΔΙΚΗΣ ΔΙΑΦΟΡΑΣ, ΟΠΩΣ ΑΚΡΙΒΩΣ ΙΣΧΥΕΙ ΣΤΗ ΔΙΚΟΝΟΜΙΑ ΟΛΩΝ ΤΩΝ ΚΛΑΔΩΝ ΔΙΚΑΙΟΥ, ΕΙΔΙΚΟΤΕΡΑ ΔΕ ΣΤΗΝ ΑΣΤΙΚΗ ΔΙΚΗ ΜΕ ΤΗΝ ΘΕΣΜΟΘΕΤΗΣΗ ΤΗΣ ΔΙΚΑΙΟΔΟΣΙΑΣ ΤΟΥ ΕΙΡΗΝΟΔΙΚΕΙΟΥ, ΤΟΥ ΜΟΝΟΜΕΛΟΥΣ ΠΡΩΤΟΔΙΚΕΙΟΥ ΚΑΘΩΣ ΚΑΙ ΤΟΥ ΠΟΛΥΜΕΛΟΥΣ.

Answer to Question 5: ΣΑΦΩΣ, ΣΥΜΦΩΝΑ ΚΑΙ ΜΕ ΤΑ ΑΝΩΤΕΡΩ, Η ΥΙΟΘΕΤΗΣΗ ΠΙΟ ΕΥΕΛΙΚΤΗΣ ΔΙΑΔΙΚΑΣΙΑΣ ΚΑΙ Η ΕΦΑΡΜΟΓΗ ΣΥΝΤΕΤΜΗΜΕΝΩΝ ΠΡΟΘΕΣΜΙΩΝ ΓΙΑ ΤΗΝ ΕΚΔΟΣΗ ΑΠΟΦΑΣΗΣ ΘΑ ΒΕΛΤΙΩΝΕ ΤΟ ΠΕΡΙΒΑΛΛΟΝ ΔΙΕΞΑΓΩΓΗΣ ΔΙΑΙΤΗΤΙΚΗΣ ΔΙΑΔΙΚΑΣΙΑΣ ΕΠΙΛΥΣΗΣ ΤΩΝ ΔΙΑΦΟΡΩΝ, ΑΦΑΙΡΩΝΤΑΣ ΥΛΗ ΑΠΟ ΤΑ ΔΙΚΑΣΤΗΡΙΑ ΚΙ ΕΠΙΤΑΧΥΝΟΝΤΑΣ ΤΗ ΔΙΕΥΘΕΤΗΣΗ ΕΚΚΡΕΜΩΝ ΥΠΟΘΕΣΕΩΝ.

Answer to Question 6: i) ΟΧΙ, ΕΙΝΑΙ ΣΧΕΔΟΝ ΑΓΝΩΣΤΗ ΣΤΗΝ ΕΛΛΗΝΙΚΗ ΠΡΑΓΜΑΤΙΚΟΤΗΤΑ, ii) ΘΕΤΙΚΑ, ΚΑΘΩΣ ΘΑ ΕΙΧΕ ΠΛΕΟΝΕΚΤΗΜΑΤΑ ΤΟΣΟ ΣΕ ΧΡΟΝΟ ΟΣΟ ΚΑΙ ΣΕ ΧΡΗΜΑ, ΥΠΟ ΤΗΝ ΠΡΟΫΠΟΘΕΣΗ ΛΕΙΤΟΥΡΓΙΑ ΕΝΟΣ ΑΠΟΤΕΛΕΣΜΑΤΙΚΟΥ ΚΑΙ ΑΔΙΑΒΛΗΤΟΥ ΣΥΣΤΗΜΑΤΟΣ

Answer to Question 7: i) ΘΕΤΙΚΗ, ii) ΝΑΙ. Η ΥΠΑΡΞΗ ΘΕΣΜΟΘΕΤΗΜΕΝΟΥ, ΣΥΝΤΟΜΟΥ ΚΙ ΑΠΟΤΕΛΕΣΜΑΤΙΚΟΥ ΣΥΣΤΗΜΑΤΟΣ ΕΞΩΔΙΚΗΣ ΕΠΙΛΥΣΗΣ ΤΗΣ ΔΙΑΦΟΡΑΣ, ΕΝΤΟΣ ΔΕΣΜΕΥΤΙΚΩΝ

ΠΡΟΘΕΣΜΙΩΝ ΚΑΙ ΜΕ ΔΕΣΜΕΥΤΙΚΟ ΑΠΟΤΕΛΕΣΜΑ, ΧΩΡΙΣ ΔΥΝΑΤΟΤΗΤΑ ΠΡΟΣΦΥΓΗΣ ΣΤΑ ΔΙΚΑΣΤΗΡΙΑ

Appendix 11 Personal and Phone contacts

Contact 1: Stefanos Gerasimou-Phone Contact

- Phone contact with Stefanos Gerasimou . He is an assistant professor of Public Contracting Law in the department of civil engineers in Metsovion Politechnion in Athens. The purpose of contacting him was to recommend me some useful literature concerning the legislation in public projects at the beginning of my research. Therefore, I found the opportunity to ask him to describe me briefly the current formal out-of court dispute resolutions in the Greek construction industry. A part of the conversation is cited below:

-Stefanos, could you tell me what are the dispute resolution methods which are used in the construction industry in Greece?

-Well, first of all, as I told you before the dispute methods which apply in the public and in private contracts are different to each other. In public projects, contractors deal with the disputes by the act of “objection” and the act of “healing request” against the directing service referring to the supervising authority. Only after the act of these two legal-like proceedings can the contractor refer the dispute to the civil court.

-Stefanos since you mentioned, directing service and supervising authority; are they both legal entities’ of the State?

-Exactly.

-What are the duties of the directing service and what are those of the supervising authority? Could you briefly describe them to me?

-I can give you some examples to understand. The directing service is the one who actually supervises the construction works and the contractor. It is also responsible for the terms of the contract and if something changes in the process it is obligated to publish any action which is undertaken and is not included in the contract; like re-evaluating some works. Any payments are also been made by the directing service. On the other hand, the supervising is responsible for most important matters such as the publication of a decision concerning an “objection”. In general the supervising authority controls the project through “the eyes and ears” of the directing service. Now, concerning the two procedures, they seem to work fine in the theory but in practice they rarely solve the problem rather than being a requires pre-procedure for the contractor to have the right to appeal to the court.

-What about public projects?

-In public projects, there are two formal options for dispute resolution. Either Arbitration, providing it is a term in the contract, or making an appeal to the civil court.

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Contact 2:Konstantinos Theodorou-Personal contact

- Personal contact with Christos Theodorou, a civil engineer and certified member of the TCG. He co-owns the construction company TRIKAT ATE, based in Trikala,Greece. The company undertakes public construction works under traditional contracts. The purpose of our meeting was to have a discussion about the perception of the dispute resolution methods for disputes arise under pubic projects. The transcript below contains only the useful comments of the discussion.

- Mr Thodorou, could you based on your experience either personal or not, tell me your opinion about the procedures of “objection” and “healing request”?

- The procedures of “Objection” and “Healing request” is just the nightmare of any construction company. They can really delay the time of the dispute settlement and rarely result to an actual resolution. Contractors never expect to solve their differences with the directing service of the State by using these kind of procedures. It is just a waste of time and you finally refer to the civil court for your claim.

-Has your company ever been involved in these procedures?

-We mainly undertake small budget works, so if any differences arise during the contract, for example; wrong evaluation of some construction works, knowing the procedure we just evaluate the loss and it doesn't worth the time of waiting. Moreover, usually the difference is not subject to claim to the civil court so we do not need to certify we have been through this procedure. You see, the current legislation obligates the contractors and the construction companies to follow the action of “objection” and “healing request” in order to have the right to appeal to the civil court in the future.

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Contact 3:Thanasis Gadas-personal contact

Contact with Thanasis Gadas. Gadas is a civil engineer and member of TCG in the department of Central-West Thessaly in Larisa. Also, throughout his career he has practiced as an Arbitrator for the TCG. The purpose of my meeting with him was to collect some literature material

about the procedure of Arbitration conducted under the TCG. The transcript provided below is a part of our informal conversation.

-Mr Gadas, I was wondering if there are any statistical data available concerning the number of cases referred to your department for dispute resolution under the operation of Arbitration.

-In our department, there are no formal statistics. Based to my 15- year personal experience in the department though, there were only 3 cases in 15 years.

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Contact 4:Thanasis Liaramantzas-Phone contact

- Phone contact with Thanasio Liaramantza. Liaramantzas is a rural and surveying Engineer and certified member of TCG. He works at the administrative office for Arbitration in the Technical Chamber of Greece in Athens. He participated in arbitration under the TCG by undertaking administrative procedures for over 15 years.

-Mr Liaramantza, I am a masters level student in London and currently carrying out my research report about Arbitration and other ADR methods in Greece and UK. Therefore I have some questions for you concerning the Arbitration procedure operated by the TCG.

-If I can help you, yes of course.

-Thank you very much. So, Mr Liaramantza, I would like to know if the arbitration award published by the TCG is binding for the parties and how many cases per year are referred to the Chamber for a dispute resolution with the mechanism of Arbitration.

-As far as the binding of the arbitration award is concerned, it is binding according to the general rules for Arbitration of the C.Civ.P. Now, the number of the cases which refer to the Chamber for Arbitration every year is quite limited. I would say that approximately we receive 10 Notices to Refer to Arbitration every year.

-One last question; Do the TCG rules for arbitration apply only on domestic contracts?

-No, the TCG rules can apply even when one of the parties is not Greek based, as long as the arbitration procedure of the TCG is part of the contractual terms. Though, in that event, there also apply some provision of the International Arbitration , mainly those concerning the arbitrators' fees.

-Thank you very much again. Have a good day.

-You're welcome. I would be glad to help you with anything else comes up. Good luck.

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